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## Holy Experiments and Unholy Acts: Sex, Law, and Religion in Colonial Massachusetts, Rhode Island, and Pennsylvania

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The University of Southern Mississippi

Holy Experiments and Unholy Acts:  
Sex, Law, and Religion in Colonial Massachusetts, Rhode  
Island, and Pennsylvania

by

Anna Leigh Todd

A Thesis  
Submitted to the Honors College of  
The University of Southern Mississippi  
in Partial Fulfillment  
of the Requirement for the Degree of  
Bachelor of Arts of History  
in the Department of History

April 2013



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## Abstract and Key Terms

This thesis uses the law codes and court cases of sexual misconduct from the colonies of Massachusetts, Rhode Island, and Pennsylvania to determine the degree to which the colonies' stated understandings of the relationship between church and state were practically applied to the governing of their societies as well as how that understanding affected the daily lives of colonial women. Thus, this analysis uses the lens of female sexual deviance to determine the degree to which church and state were integrated or separated within the three colonies.

Chapter 1 discusses the law as it was written. It examines the sexual misconduct laws published by each colony from the years 1630-1750 and compares those laws in terms of severity and variety. Chapter 2 analyzes a sample of the court records for each colony regarding female sexual deviance. These statistics are compared in terms of frequency, severity of punishment, and variety of convictions. The Conclusion sums up these findings and locates them within the larger argument regarding each colony's interpretation of the relationship between church and state and how that interpretation corroborates or contradicts what other historians have argued concerning these positions. The project ultimately finds that each colony's governing bodies were in fact influenced by their respective religions, however, to varying degrees and in unique ways.

### Key Terms:

Colonial Era, Massachusetts Bay colony, Rhode Island colony, Pennsylvania colony, Puritanism, Quakerism, sexuality, gender, colonial law.

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## Introduction

It is a commonly agreed upon fact that the seventeenth-century colonies of New England were founded upon the principle of freedom of religion. However, the definition of that freedom has often been overlooked in favor of a history fitting with modern day principles of the separation of church and state. Rather than encompassing freedom for all religions, the Puritans actually sought freedom for their particular type of religion, and none other. Furthermore, this religious precedent permeated every aspect of colonial life in New England including the law. Massachusetts Bay was not the only colony founded on a religious principle, however. The colonies of Rhode Island and Pennsylvania also had their beginnings in the religiously charged atmosphere of the seventeenth century and therefore each had their own unique stance on the position of the church within society.

Each of these colonies combined a particular religious tradition with a specific relationship between that religion and the responsibilities of the state. Massachusetts wove Puritanism into every sector of state affairs, using the two to support and preserve each other through the enforcement of a set of common norms and standards of morality. Rhode Island chose to officially separate church and state while maintaining a socially Puritan citizenry. Quaker Pennsylvania also undertook this separation of the spiritual and secular, however the faith they were separating was drastically different than that of the other two colonies. Thus, while each colony relied on a strong religious tradition, they each had a unique

understanding of the relationship that those religions should share with the workings of secular government.

These colonial religions also dictated an understanding of gender and sexuality. For women in particular, Christianity held a double standard. On the one hand, women were expected to be spiritual models within their families and communities at large. However, on the other hand, they were viewed as being the weaker vessel, more susceptible to sin and temptation. It was therefore the duty of colonial leaders to police this susceptibility and by doing so, to protect the community at large. As a result, gender, religion, and law intersected in order to dictate and regulate the crucial ways colonial women lived their lives.

A particularly representative example of this complex interaction can be seen in the sexual deviance laws of the Massachusetts, Rhode Island, and Pennsylvania colonies. An examination of the laws of these colonies is mostly keeping with each colony's stance on the relationship between church and state. Rhode Island's and Pennsylvania's laws were both significantly more lenient in terms of punishment than were those of Massachusetts. They also contained less types of sex crimes that could be prosecuted. However, an analysis of the court cases presents a less clear-cut picture. In the first chapter, Pennsylvania's laws are slightly more severe than those of Rhode Island. However in the second chapter, Pennsylvania's court records are more lax than Rhode Island's.

This shift belies the true nature of church and state relations in these colonies. Despite their official stances on the relationship between church and state, each colony's faith influenced state proceedings. Massachusetts is a sort of control



group in this study as it was the only colony that unapologetically intertwined the institutions of church and state. While Rhode Island and Pennsylvania officially declared a separation of church and state, each colony's majority faith can still be seen at work, particularly in the sexual misconduct laws and prosecutions of sexually deviant women. This legal evidence reveals that gender ideology and notions of sexuality that were inherently tied to Puritanism and Quakerism had a direct effect on the sex laws and prosecution rates of deviant women in each colony. Thus church and state were connected, at least to some extent, in each of the three colonies.

It became quite clear from an examination of Rhode Island's court cases that Puritanism and its ideals regarding gender and sexuality were still present despite the colony's official stance on the separation of the secular and spiritual. Women were prosecuted for significantly more sex crimes in Rhode Island than in Pennsylvania despite each colony's alleged separation of church and state. Since Pennsylvania's court cases showed a more lenient treatment of sexually deviant women than Rhode Island, it would seem that Pennsylvania was simply better at separating the two institutions. However, the difference really lies in the gender ideology of the Quaker faith. Thus, the religious tradition of Quakerism still influenced the laws and court proceedings of the colony, just in a more positive way.

This study both supports and complicates existing theories on colonial interpretations of the relationship between church and state. The first chapter confirms what a number of historians have argued about Massachusetts's blending of church and state and Rhode Island and Pennsylvania's separation of the two.

However, the second chapter complicates this theory. What this study ultimately finds is that church and state were connected to some degree in each of these three colonies regardless of their officially stated position on the issue. Essentially, the first chapter on law codes represents an ideal, whereas the second chapter on court cases represents reality. Ultimately, this study argues that both magistrates and colonists alike in colonial Massachusetts, Rhode Island, and Pennsylvania understood the institutions of church and state as connected, regardless of each colony's official stance on the matter. Thus, faith-based principles regarding gender and sexuality can be found influencing judicial proceedings even in Rhode Island and Pennsylvania.

## **I. Problem Statement**

A study of the history of early America is as crucial to understanding the complex inner workings of the United States today, as is the study of the political, economic, and societal conditions of late. Understanding the standard of living and daily lives of early colonists grants a more complete understanding of the conditions under which a new nation was formed. The colonial period is also worthy of study in and of itself due to the unique circumstances of colonization and all that it entails politically, culturally, and economically. Much has been written on the daily lives of male colonists during the formative years of this country; however the history of colonial women is not nearly as complete. The lack of extensive scholarship concerning colonial women is detrimental to a fully formed understanding of

colonial life, as women played a crucial role in the early American communities that became the United States.

One area that offers a particularly useful glimpse into the lives of colonial peoples is the study of early American law. While much has been said concerning the early years of American law and legal history, including some studies exploring the role of women within these legal systems, more areas of study need to be explored. For instance, there are no studies that use comparative methods to examine multiple colonies and the way women were treated in each with regard to the law. Equally important to an understanding of the law is the understanding of a culture's religious institutions. During this period, each colony had its own religious system, which had a profound impact on the functioning of government and daily life. Many historians have explored the influence of religion on the colonies, especially Puritanism in New England; however, these studies have not fully investigated the relationship between religion and law as it relates to the lives of women.

This study seeks to analyze the legislation and legal records of the northern colonies of Massachusetts, Rhode Island, and Pennsylvania in order to determine whether and how the established religions, or lack thereof, in each colony affected the way women were addressed by and treated by the legal systems. These three colonies were chosen due to the strictness of Massachusetts's Puritan society, the gender equalizing effect of Quakerism on the colony of Pennsylvania, and the relative religious toleration practiced by Rhode Island. Such a comparison provides a better understanding not only of the experiences of women during the colonial

period of American history, but also the way in which religion influenced early American law and vice versa.

The study focuses primarily upon laws concerning sexual misconduct, a subject that has often been connected to religious ideology. Sexual behavior is generally regarded as a private matter today, and is influenced by an individual's personal beliefs and values. However, during the colonial period, sexuality and sexual behavior were much more public affairs that were inextricably tied to long established religious beliefs and the success of the community as a whole. For these reasons, the study of sexual misconduct laws allows a special insight into the degree each of the three colonies' law codes were influenced by the religious practices of their citizens. Furthermore, an examination of sexual misconduct laws highlight the plight of women in these societies, as sexual deviance and misdeeds often took on a largely feminine connotation, due to the Christian belief that women were the weaker spiritual vessel. Ultimately, this study hopes to test, through a thorough analysis of the laws themselves and conviction rates of sexual crimes, whether colonies such as Massachusetts, which had a strict religious-centered society, convicted more women of sex-related crimes than Quaker Pennsylvania or church-independent Rhode Island.

While there is a wealth of scholarly material available on each facet of this study individually (colonial law, religion, women, and sexuality), very few studies have been produced that combine all of these subjects into one. Therefore, this study will fill a gap in the historiography by using a comparative method to better understand the relationship between gender, religion, and law in the northern

colonies. It is the goal of this study to better understand how a colony's religion influenced its secular institutions, as well as to acquire more knowledge of the lives of colonial women and their positions within society as a result of this influence. Furthermore, this study makes a historical contribution about the status of women in Pennsylvania and especially Rhode Island, two colonies that have received significantly less attention from gender historians than that of Massachusetts. Ultimately, this study attempts to utilize a wealth of data on various aspects of colonial life in order to interpret it in new and innovative ways, hopefully providing a more complete understanding of colonial gender and religion.

## **II. Historiography Review**

### **Colonial Law**

The history of colonial forms of government and judicial systems has been of great interest to many scholars. A number of historians have explored early colonial laws in order to determine the roots of the legal ideas that shaped the law of the United States, which consequently have had profound effects on our rights and privileges as citizens today. These scholars have examined the influences, execution, and consequences of colonial law in each of the regions of early America in order to better understand its transformation into the law that is in place in the United States today.

In his book, *The Common Law in Colonial America: Volume I, the Chesapeake and New England, 1607-1660*, William E. Nelson discusses the differences in the degree of adoption of English common law in various American colonies. Three of

his chapters discuss New England specifically. He describes the Puritan attempt at creating a perfect harmony of law and religion based on the ideas of moderation and self-control. Nelson also argues that the New England satellite colonies of Connecticut, Rhode Island, Plymouth, and New Haven, while instituting some unique individual changes, largely based their law codes on that of Massachusetts.<sup>1</sup>

Historian Peter Charles Hoffer, in his book *Law and People in Colonial America*, discusses the ways colonists transformed and shaped law codes up until the American Revolution. He compares colonial laws with English common law as well as examining regional differences in the colonies and transformations of law systems over time. Hoffer also demonstrates how these changes ultimately resulted in the formation of the legal code adopted after the Revolution in the United States.<sup>2</sup>

In, *Law and Liberty in Early New England: Criminal Justice and Due Process 1620-1692*, historian Edgar J. McManus argues that the lawmakers of colonial New England were innovative in balancing governmental power and the rights of the individual. This balance, he concludes, had a profound effect on the unique American system of law that was created after the American Revolution. In the process of supporting his argument, McManus provides a detailed description of the complex legal proceedings of each of the colonies, as well as comparisons of individual laws and their punishments.<sup>3</sup>

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<sup>1</sup> William E. Nelson, *The Common Law in Colonial America: Volume I, the Chesapeake and New England, 1607-1660* (New York: Oxford University Press, 2008).

<sup>2</sup> Peter Charles Hoffer, *Law and People in Colonial America* (Baltimore: John Hopkins University Press, 1998).

<sup>3</sup> Edgar J. McManus, *Law and Liberty in Early New England: Criminal Justice and Due Process 1620-1692* (Amherst: The University of Massachusetts Press, 1993).

In a more focused study, George Lee Haskins discusses the evolution of Massachusetts' governmental and judicial institutions in the book *Law and Authority in Early Massachusetts: A Study in Tradition and Design*. He argues that the Puritan tradition of the colony resulted in a covenantal form of law as well as a tendency to adapt that law to changing Colonial needs, resulting in a tradition of fluidity regarding the colony's legal codes. Haskins also discovered a strong ecclesiastical presence within the legal system, as well as a tendency for the constituents to sacrifice personal liberty to government authority in order to protect the community as a whole.<sup>4</sup>

In a twist on Haskins' study, Michael Stephen Hindus compares the legal codes of Massachusetts with those of South Carolina in an attempt to discern subtle differences between the two, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878*. As did Haskins, Hindus finds that the law codes of Massachusetts were open to alteration as needed. Hindus also finds that the types of crimes were quite different in the two colonies, as well as the basic structures of the legal systems.<sup>5</sup>

In his book, *Dispute and Conflict Resolution in Plymouth County, Massachusetts, 1725-1825*, William E. Nelson discusses how conflicts were resolved in colonial communities through the institutions of the town meeting, the church

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<sup>4</sup> George Lee Haskins, *Law and Authority in Early Massachusetts: A Study in Tradition and Design* (New York: The MacMillan Company, 1960).

<sup>5</sup> Michael Stephen Hindus, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878* (Chapel Hill: The University of North Carolina Press, 1980).

congregation, and the formal legal system. He describes each institution's process of conflict resolution and its effectiveness, ultimately arguing that there was a gradual shift over time from church-centered conflict resolution to a more legal system. In the process of his research, Nelson describes in great detail the inner workings of the court system and various litigation statistics and trends.<sup>6</sup>

### **Colonial Women**

The lives of colonial women have been of particular interest to scholars of gender and women's history since the 1970s. Long overlooked, the history of colonial women has experienced a surge during the past few decades that has significantly contributed to a better understanding of what life was like for women and how important women were to colonial society.

An appropriate introduction to a study of colonial women is the chapter of *A Companion to Colonial America*, entitled "Women and Gender" that discusses the evolution of scholarship concerning women's history beginning in the 1970s. In addition to providing an excellent resource on colonial women's history, the chapter, written by Carol Karlsen, also includes some insightful conclusions about colonial life. In particular, it discusses that while both Puritans and Quakers believed in the equality of the sexes before God, only the Quakers were willing to allow that belief to permeate other aspects of religious and social life.<sup>7</sup>

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<sup>6</sup> William E. Nelson, *Dispute and Conflict Resolution in Plymouth County, Massachusetts, 1725-1825* (Chapel Hill: The University of North Carolina Press, 1981).

<sup>7</sup> Carol Karlsen, "Women and Gender," in *A Companion to Colonial America*, ed. Daniel Vickers (Malden: Blackwell Publishing, 2006), 194-235.



In her book, *First Generations: Women in Colonial America*, Carol Berkin attempts to paint a picture of the lives of various colonial women in the different regions of colonies. The chapter entitled, "Goodwives and Bad: New England Women in the Seventeenth Century," discusses how women were subordinated by patriarchy, the demands of motherhood, and the Congregational Puritan church. However, she concludes that New England women took these situations and manipulated them in order to extract as much power as they could within their strict communities.<sup>8</sup>

Beverly Vorpahl's article "The Lives of America's English Foremothers" gives a brief but helpful overview of the lives of Puritan women in seventeenth-century New England. While Vorpahl does not make a substantial argument, she does provide crucial information to an understanding of the lives of Puritan women and their place within New England society. Vorpahl describes Puritan ideas of sexuality and women's roles, marriage expectations, and the consequences of violating those expectations as dictated by the law. While brief, Vorpahl's piece does provide a useful reference for those seeking information on Puritan views of sex, marriage, and feminine responsibility. It also highlights the fact that the expectations society held for Puritan women were stifling, oppressive, and based on a strictly patriarchal system.<sup>9</sup>

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<sup>8</sup> Carol Berkin. "Goodwives and Bad: New England Women in the Seventeenth Century." In *First Generations: Women in Colonial America*, ed. Eric Foner. (New York: Hill and Wang, 1996).

<sup>9</sup> Beverly Vorpahl, "The Lives of America's English Foremothers," *History Magazine* 13, no. 1 (October 2011): 45-47, *History Reference Center*, EBSCOhost (accessed February 9, 2012).

Karin Wulf's *Not All Wives: Women of Colonial Philadelphia*. Wulf focuses specifically on those women who were unmarried, whether by choice or circumstance, in an attempt to ensure all women get their historical due, not just married women. Ultimately Wulf finds that marriage was not a desired or applicable choice for some colonial women, and that those who were not married experienced greater social and cultural independence despite increased tendencies toward poverty.<sup>10</sup>

In her book, *Common Whores, Vertuous Women, and Loveing Wives: Free Will Christian Women in Colonial Maryland*, Debra Meyers discusses the relationship between the type of Christianity practiced in the colony and the subsequent views the citizens adopted towards women. She finds that Free Will Christians held exalted views of womanhood, which opened up whole new realms of opportunities for women in their communities. This unique view of women, according to Meyers, stemmed from their inherent belief in an individual's relationship with God and the influence of his or her personal salvation experience.<sup>11</sup>

In a slightly different direction, Elizabeth Reis discusses the religious ideals behind the Salem witch trials in the book *Damned Women: Sinners and Witches in Puritan New England*. She discusses in particular the relationship between women and sin within Puritanism. Her research offers a glimpse into the inner workings of Puritan ideology with regard to women's position in the church and the weakness of

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<sup>10</sup> Karin Wulf, *Not All Wives: Women of Colonial Philadelphia*, (Philadelphia: University of Pennsylvania Press, 2000).

<sup>11</sup> Debra Meyers, *Common Whores, Vertuous Women, and Loveing Wives: Free Will Christian Women in Colonial Maryland* (Bloomington: Indiana University Press, 2003).

their sex in physical as well as spiritual terms. She repeatedly affirms that one of the major contributing factors to the large number of women accused of witchcraft was a deep-felt spiritual inadequacy among women and a belief in their own inherent wickedness, stemming from the Original Sin of Eve.<sup>12</sup>

### **Colonial Sexuality**

Any study of legal and gender history is inextricably tied to concepts of sex and sexuality. Women have been associated with physical love and desire from the beginning of time, and therefore cultural ideals about sex have important implications for the status of women in all time periods. Therefore, a significant portion of the material utilized for this study will include sources about colonial ideals of sex and intimacy.

In his book *Sexual Revolution in Early America*, Richard Godbeer studies the attitudes and social expectations that early Americans assigned to their ideas of sex. He also investigates a shift that occurred concerning social opinions about sex over time, a shift which relegated the subject more to the private realm than the public sphere. Godbeer traces ideas of sex not only in New England, but also in the Middle Colonies. The author also examines the different meanings about sex during and after the American Revolution. Godbeer makes important contributions concerning

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<sup>12</sup> Elizabeth Reis, *Damned Women: Sinners and Witches in Puritan New England* (Ithaca: Cornell University Press, 1997).

colonial ideas of sexuality and its acceptable place within society, and how both changed over time.<sup>13</sup>

Another book concerning early American sexuality is Clare A. Lyons's *Sex Among the Rabble: An Intimate History of Gender and Power in the Age of Revolution, Philadelphia, 1730-1830*. While largely unconcerned with early colonial ideas of sex and gender, this book picks up where Godbeer's study stopped. Lyons examines how ideas of sexuality were crucial in forming and maintaining balances of gendered power in the Revolutionary world. The work highlights information about women's place in society and their sexuality within these power struggles. Ultimately, Lyons finds that a growing polarization between men and woman was played out in largely sexual terms.<sup>14</sup>

One article that combines the theme of sexuality with that of colonial law is Robert F. Oaks's "Things Fearful to Name': Sodomy and Buggery in Seventeenth-Century New England." He argues that despite strict laws and harsh punishments, deviant sexual practices could not be completely wiped out in colonial society. Oakes focuses on sodomy, or homosexuality, and buggery, or bestiality; two terms that were often interchanged. He suggests that some courts were willing to overlook such offenses unless there was sufficient evidence and even then were unwilling to apply the harshest punishment of the death penalty, even though the acts were considered capital offenses. Oaks concludes by suggesting that colonists were less

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<sup>13</sup> Richard Godbeer, *Sexual Revolution in Early America* (Baltimore: John Hopkins University Press, 2002).

<sup>14</sup> Clare A. Lyons, *Sex Among the Rabble: An Intimate History of Gender and Power in the Age of Revolution, Philadelphia, 1730-1830* (Chapel Hill: University of North Carolina Press, 2006).

hesitant to employ the death penalty against buggery offenders than sodomizers, thereby demonstrating colonial opinions about these two crimes and suggesting leniency in sodomy cases.<sup>15</sup>

Another article combining colonial law and themes of sexuality is Cornelia Hughes Dayton's "Taking the Trade: Abortion and Gender Relations in an Eighteenth-Century New England Village." The article makes several important points concerning abortion and sexual misdeeds in colonial New England. Dayton points to a particular instance of illicit sex and abortion as highlighting changing gender expectations during the time and marking the emergence of the popular sexual double standard between men and women. Dayton also finds that abortion itself was not the factor that led to community strife, being that abortions were not uncommon during this time. The real issue, according to Dayton, was the initial sin of fornication.<sup>16</sup>

### **Colonial Religion**

Religion is crucial to this study because it was one of the most important aspects of colonists' lives. Religious beliefs and values pervaded every aspect of colonial life, and as a result, often intersected with the laws that governed their societies. Religion has been a very popular topic among colonial historians, and

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<sup>15</sup> Robert F. Oaks, "'Things Fearful to Name': Sodomy and Buggery in Seventeenth-Century New England," *Journal Of Social History* 12, no. 2 (Winter 78 1978): *America: History & Life*, EBSCOhost (accessed February 2, 2012).

<sup>16</sup> Cornelia Hughes Dayton, "Taking the Trade: Abortion and Gender Relations in an Eighteenth-Century New England Village," In *Women's America: Refocusing the Past*, eds. Linda K. Kerber and Jane Sherron De Hart (New York: Oxford University Press, 2004).

using these works will allow larger conclusions about the relationship between religion and the law codes of each of the three colonies to be written.

Basic texts explaining the common belief systems, practices, and ecclesiastical structures of both Puritanism and Quakerism are indispensable to form a general understanding of each sect and the place each allocated for its female members. Francis J. Bremer's *Puritanism: A Very Short Introduction* provides a short but thorough explanation of the beliefs, practices, and daily lives of the first group of settlers to permanently migrate to New England. Bremer comments on the relationship between the church and state, the Puritan's interactions with other faiths, and their expectations concerning families and the community in general.<sup>17</sup>

Equally useful are general overviews of the Quaker religion and civilization in Pennsylvania. Barry Levy's *Quakers and the American Family: British Settlement in the Delaware Valley* attempts to uncover why domesticity was so much more dominant in early America than it was in contemporary Britain. Levy looks to the legacy of the Quaker movement in Pennsylvania as the explanation behind this core of domesticity, an ideal that enabled Quakers to maintain control over their colony until the American Revolution. In the process of detailing the Quaker connection to domesticity, Levy provides a wealth of information on the structure of the Quaker family and community.<sup>18</sup> Also, related to Bremer's introduction to Puritanism, is Pink Dandelion's book of the same series on Quakerism, which will shed equal light on the intricacies of the Quaker faith.

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<sup>17</sup> Francis J. Bremer, *Puritanism: A Very Short Introduction* (New York: Oxford University Press, 2009).

<sup>18</sup> Barry Levy, *Quakers and the American Family: British Settlement in the Delaware Valley* (New York: Oxford University Press, 1988).

While the colony of Rhode Island did not institute an established religion, preferring a more tolerant religious environment, the colonists were not unchurched. In fact many of them brought largely Puritan values with them as they entered the colony, and therefore religion still constituted an enormous part of their daily lives. Since the scholarship on Rhode Island is not as large as the other colonies and its history less known, it was crucial to utilize a few general histories of the colony. One such book, Sydney V. James's *Colonial Rhode Island: A History*, provided valuable basic information on the colony's founding and progression.<sup>19</sup>

Monica D. Fitzgerald's "Drunkards, Fornicators, and a Great Hen Squabble: Censure Practices and the Gendering of Puritanism." Fitzgerald addresses the problem of community censorship in colonial America. She argues that Puritan communities established and enforced certain parameters for behavior that differed according to the sex of the citizen. Fitzgerald goes on to argue that these expectations manifested in the belief that men were to perform certain civic duties while women were to be judged according to their personal piety and spirituality. Such an environment allowed church members a degree of participation in the life of the church family, which in turn provided a check on the power of ministers. Of particular importance to this study is the author's conclusion that this gendered hierarchy of church censorship actually gave women a degree of importance within society if they lived up to this high expectation of piety.<sup>20</sup>

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<sup>19</sup> Sydney V. James, *Colonial Rhode Island: A History* (New York: Charles Scribner's Sons, 1975).

<sup>20</sup> Monica D. Fitzgerald, "Drunkards, Fornicators, and a Great Hen Squabble: Censure Practices and the Gendering of Puritanism," *Church History* 80, no. 1 (March 2011): 40, *MasterFILE Premier*, EBSCOhost (accessed February 2, 2012).

Also, commenting on the inner workings of the Quaker belief system as it relates to gender is Ng Su Fang in the article "Marriage and Discipline: The Place of Women in Early Quaker Controversies." The piece aims at uncovering the place of women during a major schism in the early congregations of the Society of Friends in order to fully understand all of the implications of the event. Ultimately, Su Fang argues that the conflict was not merely one of religious doctrine and orthodoxy, but also a struggle among the female community to gain standing and respectability within their congregations. The piece highlights the beliefs of the Quaker community concerning women's place within the congregation and their appropriate level of authority. An understanding of the place of women within Quaker society is crucial to this study in that Pennsylvania was established as a Quaker experiment, and the gender beliefs of the Friends determined the degree of participation women had in the community.<sup>21</sup>

### **Women and Colonial Law**

Progressing from the existing scholarship and embracing the field of women's history, many scholars have already begun to examine the relationship between women and law. One such study concerning colonial American history is N.E.H. Hull's book, *Female Felons: Women and Serious Crime in Colonial Massachusetts*. Hull examines whether or not the commonly accepted system of simultaneously sanctification and subordination of women made its way into the

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<sup>21</sup> Ng Su Fang, "Marriage and Discipline: The Place of Women in Early Quaker Controversies," *Seventeenth Century* 18, no. 1 (Spring 2003): 113, *Academic Search Premier*, EBSCOhost (accessed February 9, 2012).



legal system of early Massachusetts in terms of conviction rates and crime statistics. Hull concludes that conviction rates were relatively consistent among men and women with regard to serious crimes and that the court proceedings were generally devoid of gender bias. She did, however, find that women were more likely to commit certain types of crime and that the marital and racial status of the female offenders did have an effect on conviction rates.<sup>22</sup>

Another book that bridges both of these topics, *Murdering Mothers: Infanticide in England and New England, 1558-1803*, written by Peter C. Hoffer and N.E.H. Hull. This work focuses specifically on the crime of infanticide and its place within the legal system. The authors find that marital status, poverty, societal pressures, and psychological characteristics of the perpetrators all influenced the rate of infanticide during this period. However, they also found that improved ideas about the place of women in society and fairer proceedings during trials led to a decrease in infanticide conviction rates over time.<sup>23</sup>

Discussions of the intersection of women and colonial law oftentimes are also discussions of appropriate behavior for the female sex and generally comment on sexual behavior and morality. In his book *Anne Orthwood's Bastard: Sex and Law in Early Virginia*, John Ruston Pagan recounts the tale of indentured servant Anne Orthwood as her choice to engage in illicit sex produced multiple legal confrontations that highlights ideas of sex, master-servant relationships, and societal concerns in private matters that have financial consequences for Virginian

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<sup>22</sup> N.E.H. Hull, *Female Felons: Women and Serious Crime in Colonial Massachusetts* (Urbana: University of Chicago Press, 1987).

<sup>23</sup> Peter C. Hoffer and N.E.H. Hull, *Murdering Mothers: Infanticide in England and New England, 1558-1803* (New York: New York University Press, 1981).

communities as a whole. Pagan argues that Virginia's unique economic and labor system resulted in a deviation from English law, as the colony's leaders attempted to strengthen their own positions within society. While largely an economic argument, the book also has much to say about sexuality as it pertains to the law. It describes Anne's ordeal of naming the father of her children, the father's financial responsibility for the surviving child, as well as his answering for the initial deed of fornication. John was ultimately absolved from the moral responsibility of fathering the child, but was required to assume financial responsibility for his upbringing. While this book concerns the colony of Virginia, and not those being examined in this study, it is nevertheless an important work on the relationship between sex and law in colonial America.<sup>24</sup>

Legal history has much to tell readers about the position of women within society. Laws are often used to shape the social order of a community by enforcing its norms and societal expectations. Therefore, one can expect that the beliefs of each of these three colonies (Massachusetts, Pennsylvania, and Rhode Island) concerning women and their place in society will be evident through their law codes and conviction rates. This study will combine legal and gender history in order to gain a better understanding of the ways societies used law in order to reinforce expectations of women and shape women's role in the home, family, and society.

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<sup>24</sup> John Ruston Pagan, *Anne Orthwood's Bastard: Sex and Law in Early Virginia* (New York: Oxford University Press, 2003).

### III. Methodology

The multifaceted nature of this study requires an approach that is largely based upon the methods of social history. According to Peter Stearns, the two fundamental principles of social history are “that ordinary people not only have a history but contribute to shaping history more generally, and that a range of behaviors can be profitably explored historically beyond (though also including) the most familiar political staples.”<sup>25</sup> Therefore, social history affirms that the study of history is not merely the study of great men who did great things; rather, it is the study of all people, men and women, whose very lives are relevant to scholarship simply because they existed. Social history also rejects the notion of an exclusive examination of the past in favor of a more interconnected study of politics, economics, and culture. By combining such a range of topics within one study, the social historian seeks to utilize all existing material and all conceivable areas of focus in order to accurately reconstruct the lives of his or her subjects.<sup>26</sup>

Being that social history encompasses such a wide range of subject areas, there is no clearly defined methodology, as the parameters of the subject and the availability of sources leads to considerable variation among studies. However, many historians would argue that it is precisely this variation that demonstrates the value of social history: “While there is no single methodology, the openness to the historical construction of various aspects of the human experience, the valuation of relatively ordinary people as historical subject and agents, and some sense of key

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<sup>25</sup> Peter N. Stearns, “Social History Present and Future,” *Journal of Social History* (Fall 2003): 1.

<sup>26</sup> Mark M. Smith, “Making Sense of Social History,” *Journal of Social History* (Fall 2003): 1-2.

historical causes and big changes in the human experience overall, combine to create considerable analytic power.”<sup>27</sup>

The boundaries of this study are limited to the colonies of Massachusetts, Rhode Island, and Pennsylvania during what may be termed the colonial period of 1630-1750. These dates were chosen with regard to the founding of the Massachusetts Bay Colony in 1630 and the start of the Revolutionary period, in the 1750s. It pertains exclusively to how women were treated within the law as it pertains to sexual misconduct; however, in this process it is necessary to explore women’s place in society in general, as well as colonial views of sexuality and the role of the law in personal life. This study largely is an interpretive examination of colonial laws and court records from which larger conclusions about the nature of church and state are drawn.

As stated previously, the main records used for this study are the laws and court records of the three colonies of Massachusetts, Rhode Island, and Pennsylvania. The official laws of each colony were traced for the entirety of the seventeenth century to expose any changes in the sex laws over time. Various available court records were also used to determine how the law was interpreted and instituted on a daily basis. Since sexual misconduct laws reveal a great deal about each colony’s view on sex and morality, the variations in these laws have been traced over time for the three colonies and compared with regard to severity, the degree privacy was taken into consideration, and variation over time. Court records were examined to determine overall totals of convictions, severity of punishments,

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<sup>27</sup> Stearns, “Social History” 4.

and strictness of implementation. These variables reveal the degree to which the laws were instituted and enforced in each of the colonies, while the rulings and punishments of the magistrates offer a particularly useful insight into the views of progressing generations of colonists. The results of these observations are then compared to a wealth of pre-existing scholarship in order to apply larger trends relating to religion, sexuality, and law in colonial America.

While this study relies heavily upon legal records, it is not exclusively situated within the realm of legal history. The legal data being collected is used to paint a more accurate picture of the social situation of women in the three colonies and the true nature of the relationship between church and state. Furthermore, this study hopes to determine the nature of the relationship between religion, law, and sexuality as it relates to women. Since the laws of a community reflect in large part their values with regard to religion, privacy, and morality, such an examination of law codes and court records provides researchers with an accurate picture of colonial society and the place that it afforded women.

The chapters of the thesis are divided according to the primary source group being discussed. Chapter 1 discusses the law as it is written; the specific sex laws of each colony are discussed, compared, and examined over time. This chapter discusses the initial similarities found among the three colonies' law codes and the changes that the laws underwent over the course of time. Chapter 2 discusses the law as it was carried out. This chapter examines conviction rates and court testimony from each colony in order to determine if there were variations in how the laws were interpreted and enforced in each colony (even in instances where the

laws themselves might either be identical or not). Ultimately the two chapters work together to discuss the true nature of the relationship in law between church and state for the three colonies and the real consequences that understandings of this relationship had on the daily lives of colonial women.

## **I. The Law as Written: Formal Statements on Church and State and their Effects on Sexual Misconduct Laws**

Virginia Anderson's *New England's Generation: The Great Migration and the Formation of Society and Culture in the Seventeenth Century* argues that religion was the primary motivation for the settlement of the Massachusetts Bay Colony. As such,

religion was interwoven into all aspects of Massachusetts's society, and therefore must be addressed.<sup>28</sup> Ann Little's *Abraham in Arms: War and Gender in Colonial New England* argues that concepts of gender, including socially constructed definitions of femininity and masculinity, are crucial to any understanding of early New England. She interprets this theme in terms of Indian conflicts and demonstrates how the crises were understood along gendered lines.<sup>29</sup> John Ruston Pagan's *Anne Orthwood's Bastard: Sex and Law in Early Virginia* is another crucial work in this regard. While Pagan's main argument is focused on Virginia, he presents a strong case for the study of law in history. According to Pagan, law is a highly useful lens through which to examine a society's ideologies, characteristics, and patterns of behavior.<sup>30</sup>

One work that has been strikingly influential on the topic of religion, law, and gender is Mary Beth Norton's *Founding Mothers and Fathers: Gendered Power and the Forming of American Society*. Norton argues that gender was crucial to the ways in which power and authority were created and wielded in colonial society. As such, she dedicates a significant amount of time to the ways in which Puritanism in the Bay Colony and other New England communities relied upon the system of patriarchy at all levels, while also examining the various ways in which it was challenged or threatened. Based on her arguments regarding the nature of power in

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<sup>28</sup> Virginia DeJohn Anderson, *New England's Generation: The Great Migration and the Formation of Society and Culture in the Seventeenth Century* (New York: Cambridge University Press, 1991).

<sup>29</sup> Ann M. Little, *Abraham in Arms: War and Gender in Colonial New England* (Philadelphia: University of Pennsylvania Press, 2007).

<sup>30</sup> John Ruston Pagan, *Anne Orthwood's Bastard: Sex and Law in Early Virginia* (New York: Oxford University Press, 2003).

New England societies, Norton interprets female sexual deviance as women choosing to revolt against established standards of patriarchy using one of the only, and most effective, means available to them.<sup>31</sup>

It is from these works, among others, that this analysis has sprung in terms of historical importance. By combining the crucial realms of gender, law, and religion, one can begin to understand these larger historical trends in order to examine their real-world application and, in a sense, recreate a sense of early colonial life. For the following analysis to be successful, the three communities must be discussed individually at length. In the following sections, each colony will be examined in terms of religion, gender, and law, with special attention directed toward the correlation between the three. A discussion of the various sex laws published by each of the three colonies and the ways they conformed or deviated from each colony's official stance regarding the acceptable role of church and state, as well as the proper reach of government into the private lives of colonial women, will illuminate the issue further.

### **Religion and Colonization in Massachusetts**

In 1628, a group of dissenting English Protestants, the Puritans, founded the Massachusetts Bay Company and migrated to New England for the purpose of practicing their religion freely without persecution. They had been driven from England due to political persecution and the poor moral state of the country and

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<sup>31</sup> Mary Beth Norton, *Founding Mothers and Fathers: Gendered Power and the Forming of American Society* (New York: Random House, 1997), See specifically Chapter 1, "The First Society," 56-95.



desired to set themselves apart to live freely in righteousness without the dangers of English depravity.<sup>32</sup> As if the initial motivation of this religiously charged group was not enough, layman John Winthrop further cemented their divine responsibility in his sermon, "A Model of Christian Charity." In it, Winthrop dictated the colonist's God-given responsibility to act as a shining example of righteousness for the rest of the world, a so-called "city upon a hill." The move held the great promise of a community of believers living in peace and prosperity, however, with such a promise also came a grave duty. If they should fail, Winthrop warned his fellow hopefuls: "we shall open the mouths of enemies to speak evil of the ways of God, and all professors for God's sake. We shall shame the faces of many of God's worthy servants, and cause their prayers to be turned into curses upon us till we be consumed out of the good land whither we are going."<sup>33</sup> From the moment they left England the Puritans carried with them a grave burden. Every action would carry a momentous righteous purpose, and they would look for signs of their success in all aspects of their new lives. It is for this reason that Puritanism, logically, wound its way into every crevice of life in the early decades of the Massachusetts Bay Colony.

In order to understand how Puritanism affected the daily lives of the women of the Massachusetts Bay Colony, one must first look at the characteristics of the faith in terms of gender relations, sexuality, and the role of church and state. The Puritan religious ideology has often been viewed as somber and strict, and not

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<sup>32</sup> Richard Godbeer, *Sexual Revolution in Early America*, (Baltimore: John Hopkins University Press, 2002), 2.

<sup>33</sup> John Winthrop, "A Model of Christian Charity – by Gov. John Winthrop, 1630," *The Religious Freedom Page*, n.d. <http://religiousfreedom.lib.virginia.edu/sacred/charity.html> (accessed January 16, 2013).

without good reason. Puritans lived in a constant state of vacillation between fear and hope, often resulting in a persisting anxiety of the status of their salvation. They constantly sought signs of divine approval, while at the same time rooting out and attempting to vanquish the innate depravity of humanity of which they were so acutely aware.<sup>34</sup> Such an awareness extended not only to the far reaches of a Puritan's soul, but also to that of his or her spouse, children, and neighbors. They went to great lengths to police the actions of fellow colonists, precisely because their perceived divine responsibility was so great; the godly community needed to be protected at all costs. As a result, colonists were subjected to intense scrutiny by their neighbors as they struggled to identify their own righteousness as well as prove its existence to their fellow community of believers.<sup>35</sup>

While Puritans believed that human beings had been given the freedom to choose their own paths, they also felt that an Original Sin had so corrupted humanity's nature that it was the responsibility of the community leaders to ensure righteousness and thus salvation.<sup>36</sup> Therefore from its very conception, an inextricable connection existed between secular and ecclesiastical institutions in the Bay Colony. At the most basic level, the relationship dictated that "it was the duty of the church to create a perfect Christian society, and of the state to furnish the

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<sup>34</sup> Peter C. Hoffer and N.E.H. Hull, *Murdering Mothers: Infanticide in England and New England, 1558-1803* (New York: New York University Press, 1981), 34; Elizabeth Reis, *Damned Women: Sinners and Witches in Puritan New England* (Ithaca: Cornell University Press, 1997), 1, 15.

<sup>35</sup> Herbert L. Osgood, *The American Colonies in the Seventeenth Century* (Gloucester: Peter Smith, 1957), 202.

<sup>36</sup> Edgar J. McManus, *Law and Liberty in Early New England: Criminal Justice and Due Process 1620-1692* (Amherst: The University of Massachusetts Press, 1993), 3.

necessary external conditions.”<sup>37</sup> Therefore the two were fundamentally linked, each reliant upon the other. As such, the judicial system was created to promote a moral community of believers living by accepted Puritan standards. The courts combined with the existing influence of community morality and social pressure to enforce the values Puritanism held dearly.<sup>38</sup> As historian William E. Nelson stated in *The Common Law in Colonial America*, “Puritanism represented a balanced and complex effort, both in the search for divine truth and in the structuring of human government, to reconcile liberty with hierarchy through a well ordered community.”<sup>39</sup> Such a well-ordered community had one goal: to promote an environment where the sins of society were restrained through the efforts of a well-respected, righteous body of community leaders.<sup>40</sup>

Key to the enforcement of religious morality was the regulation of the sexual lives of the colonists. During the colonial period, it was commonly believed that sexual misdeeds were, in essence, “gateway” infractions which led to more serious sins, making it crucial to punish these crimes most harshly.<sup>41</sup> The church policed public morality by exposing and admonishing sins of sexual license and other forms of immoral revelry such as drunkenness and failure to observe the Sabbath.<sup>42</sup>

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<sup>37</sup> Osgood, *American Colonies*, 202.

<sup>38</sup> McManus, *Law and Liberty*, 38, 56; William E. Nelson, *The Common Law in Colonial America: Volume I, the Chesapeake and New England, 1607-1660* (New York: Oxford University Press, 2008), 50.

<sup>39</sup> Nelson, *Common Law*, 50.

<sup>40</sup> Nelson, *Common Law*, 70.

<sup>41</sup> Hoffer and Hull, *Murdering Mothers*, 51-53; Godbeer, *Sexual Revolution*, 3.

<sup>42</sup> William E. Nelson, *Dispute and Conflict Resolution in Plymouth County, Massachusetts, 1725-1825* (Chapel Hill: The University of North Carolina Press, 1981), 26.

However when the efforts of the church and community pressure failed, the colonists resorted to the authority of the courts to ensure morality.<sup>43</sup>

Puritans did not view all sex as sinful however. In fact, their concepts of sex have proven to be quite sophisticated and complex. In his book *Sexual Revolution in Early America*, Richard Godbeer explains that Puritans viewed sex “not as a product of sexuality but as a component of spirituality, cultural identity, and social status.”<sup>44</sup> Rather than exhibiting the prudish tendencies that have since been attributed to their name, Puritans actually celebrated sex within the context of a loving and spiritual marriage. While spousal intimacy was exalted, however, such affection was relegated to a subordinate position to that of the affection between God and his chosen people. Therefore, Godbeer argues that a sort of erotic spirituality defined the Puritan faith, a far cry from the prudish Puritans of popular memory.<sup>45</sup> Nevertheless, Puritan teachings still proclaimed that sexual intimacy was inherently flawed and was the easiest way to open oneself up to susceptibility for sin and pollution of both bodies and souls.<sup>46</sup>

Inherently connected to Puritan opinions of sex were concepts of gender inherent in their religious tradition. Firstly, Puritan social norms relegated women and children to an uncompromisingly subservient position within the family.<sup>47</sup> Furthermore, because Puritans believed women to be weaker in body, they were

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<sup>43</sup> Godbeer, *Sexual Revolution*, 89; Michael Stephen Hindus, *Prison and Plantation: Crime, Justice, and Authority in Massachusetts and South Carolina, 1767-1878* (Chapel Hill: The University of North Carolina Press, 1980), 49.

<sup>44</sup> Godbeer, *Sexual Revolution*, 11.

<sup>45</sup> Godbeer, *Sexual Revolution*, 55, 77.

<sup>46</sup> Godbeer, *Sexual Revolution*, 61-62.

<sup>47</sup> Hoffer and Hull, *Murdering Mothers*, 34.

also perceived to be weaker in spirit; and therefore, more susceptible to the Devil's machinations.<sup>48</sup> According to Puritan ideology, Satan first attacked the soul through the body; thus, if women were weaker in body, their souls were significantly more at risk.<sup>49</sup> What is telling is that Puritans believed all souls to be feminine. According to historian Elizabeth Reis, the soul was thought to be "insatiable, in consonance with the allegedly unappeasable nature of women."<sup>50</sup> Therefore, in the minds of Puritans, it was femininity and its associated characteristics (especially its weaknesses) that were responsible for moral depravity and sinfulness. As a result, it was believed that women were more susceptible to sin, particularly that of the flesh.<sup>51</sup> The consequences of these religious ideals were a double standard dictated to Puritan women. Women were held to a strict standard of piety while also being constantly reminded of the inherent depravity of their sex.<sup>52</sup> Being that the church and courts were so intertwined, magistrates often saw it as their righteous duty to police the sexuality of the colony's women. In their minds, the sexual misconduct of women led to increasingly more serious infractions and ultimately the destruction of the spiritual community they were attempting to build and preserve.<sup>53</sup>

### **Civil Government in Rhode Island**

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<sup>48</sup> Reis, *Damned Women*, 5.

<sup>49</sup> Reis, *Damned Women*, 93; N.E.H. Hull, *Female Felons: Women and Serious Crime in Colonial Massachusetts* (Urbana: University of Chicago Press, 1987), 19.

<sup>50</sup> Reis, *Damned Women*, 93; See also Godbeer, *Sexual Revolution*, 79-80.

<sup>51</sup> Reis, *Damned Women*, 110, 95.

<sup>52</sup> Hull, *Female Felons*, 12; Hoffer and Hull, *Murdering Mothers*, 11; Reis, *Damned Women*, 2.

<sup>53</sup> Hull, *Female Felons*, 32.

The religious experiment that was the Massachusetts Bay Colony met with varying success. Even in the first decade of the colony's existence, dissenters arose to challenge the established order of the infant community of believers. One result of these conflicting ideals was the creation of a second colony: Rhode Island and Providence Plantations. Founded in 1636 by excommunicated Puritan dissenter Roger Williams, the colony of Rhode Island was created out of a group of smaller settlements all united under a common opposition to the overly strict and oppressive institutions and methods of the Massachusetts Bay Colony.<sup>54</sup> Rhode Island gained reputation as a haven of sorts for those who were either forcibly removed or voluntarily abandoned the Bay Colony.

In breaking away from Massachusetts, Roger Williams was driven by his belief that religion was as detrimental for government as government was for the aims of the church.<sup>55</sup> As such, Williams established Rhode Island based on religious tolerance and secular governance. In his book, *The American Colonies in the Seventeenth Century*, historian Herbert Osgood notes the peculiar characteristics of Rhode Island's unique experiment in government: "within it [Rhode Island] the religious test, the political activity of the clergy, the disciplining of individuals and churches, which fill so large a part in the history of the strictly Puritan colonies, found no place."<sup>56</sup> Thus out of its opposition to the religiously oppressive

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<sup>54</sup> Osgood, *American Colonies*, 332,334; Nelson, *Common Law*, 81; McManus, *Law and Liberty*, 5.

<sup>55</sup> Edmund S. Morgan, *Roger Williams: The Church and State* (New York: W.W. Norton and Company, 1967), 96-98; Sydney S. James, *The Colonial Metamorphosis in Rhode Island: A Study of Institutions in Change* (Hanover: University Press of New England, 2000), 16.

<sup>56</sup> Osgood, *American Colonies*, 333.

government of the Massachusetts Bay Colony, the colony of Rhode Island established an innovative community based on secular policies alone.<sup>57</sup> The men of the colony took great care to safeguard their fellow citizens against any future encroachments on their rights by specifically citing the term “civil government” (not religious) in the colony’s patent, thereby eliminating any question as to the nature of this new governmental system.<sup>58</sup>

Culturally, however, Rhode Island borrowed a significant portion of their beliefs and practices of their former colonial home. The colonists were still largely Puritan in ideological terms and freely practiced their religious and moral principles.<sup>59</sup> They also largely borrowed the framework for their system of government from the Bay Colony, excepting those that were severely oppressive in terms of religious intervention and those that were opposed to the authority of the English crown.<sup>60</sup> In terms of their legal system, the colonists of Rhode Island adhered to the Puritan belief that law was necessary once a righteous community had freely accepted it.<sup>61</sup> As such, early Rhode Island law was based in some degree on the Law of God as dictated by the Bible; however, the crucial difference was the exclusion of any established or tax-supported religion. While religion still held a sizeable influence in the daily lives of its citizens, church and state were kept officially separate in the colony. As a result, the courts did not punish citizens for

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<sup>57</sup> Osgood, *American Colonies*, 334.

<sup>58</sup> Osgood, *American Colonies*, 355.

<sup>59</sup> Nelson, *Common Law*, 81.

<sup>60</sup> Osgood, *American Colonies*, 345.

<sup>61</sup> Sydney V. James, *Colonial Rhode Island: A History* (New York: Charles Scribner’s Sons, 1975), 52.

holding opposing views to that of the religious majority or banish those who practiced entirely different forms of Christianity in general.<sup>62</sup>

This is not to suggest, however, that Rhode Island was immune to the moral standards of the time. According to historian Edmund S. Morgan, Williams believed that government had a duty “to impose a rigorous standard of behavior in matters that affected civility, humanity, morality, or the safety of the state and individuals in it”<sup>63</sup> However, it did not necessarily follow that such a government must rely upon an established Church in order to accomplish these aims. Morgan notes that Williams saw no contradiction between his stance on universal morality and his defense of a government separate from an official church.<sup>64</sup> Williams seems to have made a distinction between basic morality and church-sanctioned morality. By enforcing standards of ethical behavior, Williams believed that governments would be able to raise their citizens to a higher moral standard and therefore preside over a more successful state.<sup>65</sup> For this reason, crimes of general immorality, including those of sexual deviance, constituted a conspicuous presence in the early laws of Rhode Island despite the colony’s stance on the separation of church and state.

While Rhode Island began with largely the same religious ideology as the Bay Colony, its citizens soon became committed to a strongly democratic system of government that laid the foundation for an American political tradition in the years to come.<sup>66</sup> Historian Sydney V. James states in *Colonial Rhode Island: A History*, that

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<sup>62</sup> Osgood, *American Colonies*, 82-83, 97-98.

<sup>63</sup> Morgan, *Roger Williams*, 136.

<sup>64</sup> Morgan, *Roger Williams*, 136.

<sup>65</sup> Morgan, *Roger Williams*, 128.

<sup>66</sup> James, *Colonial Rhode Island*, 61.



the colonists of Rhode Island gradually began to recognize the inapplicability of divine law for their own concepts of government. Therefore, Rhode Island's legal code evolved to include only those laws which were derived from English law and the authority of the English king.<sup>67</sup>

James goes on to describe how in 1647, a mere decade after the colony's conception, the freemen decided that their government would be "DEMOCRATICAL,' that is to say, a government held by free and voluntary consent of all or the greater part of the free inhabitants!"<sup>68</sup> This revolutionary concept had serious and somewhat radical implications for the colony's code of law. According to James, the law "covered criminal, civil, and constitutional topics, with heavy emphasis on judicial procedure, but nearly nothing on commerce or the law of property," and drew inspiration from English common law, scripture, and the basic rights of man.<sup>69</sup> Despite early instability in the history of the colony, the freemen of Rhode Island were able to preserve their concepts of democracy including limiting the power of their governing bodies, preserving individual freedoms, and ensuring the right to determine for themselves how they were to be governed.<sup>70</sup>

While much has been made of the innovative and democratic governing bodies of Rhode Island, James maintains that the only "truly radical concepts" in the colony's legal code were the separation of church and state and a genuine freedom of religion.<sup>71</sup> According to official decree, all colonists "'freely and fully have and

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<sup>67</sup> James, *Colonial Rhode Island*, 55-56.

<sup>68</sup> James, *Colonial Rhode Island*, 61.

<sup>69</sup> James, *Colonial Rhode Island*, 61.

<sup>70</sup> James, *Colonial Rhode Island*, 72-74.

<sup>71</sup> James, *Colonial Rhode Island*, 74.

enjoy his and their own judgments and consciences in matters of religious concernments. . . .they behaving themselves peaceably and quietly and not using this liberty to licentiousness and profaneness, nor the civil injury or outward disturbance of others.”<sup>72</sup> Therefore, in one statement, the freemen of Rhode Island ensured for themselves a colony where they were free to practice their own religious doctrines according to their own understandings, without the involvement of a spiritually-leaning judicial system. This foundation laid the groundwork that set Rhode Island along a crucially different path from that of the strictly Puritan Massachusetts Bay Colony.

### **The Holy Experiment of Pennsylvania**

While the colonists of Rhode Island still largely relied upon Puritanism on the individual spiritual level, the colony of Pennsylvania was founded on a completely different set of religious principles. Established by William Penn in 1681, the colony of Pennsylvania was meant to be a haven for a group of religious dissenters known as Quakers or the Society of Friends.<sup>73</sup> This group got their name from their tendency to physically quake when they felt the power of the truth of God for the first time.<sup>74</sup> Their rejection of religious intolerance, aristocracy, and university-educated ministers caused them to be outcasts in both England and America.

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<sup>72</sup> James, *Colonial Rhode Island*, 70; Sydney V. James, *John Clark and His Legacies: Religion and Law in Colonial Rhode Island 1638-1750* (University Park: Pennsylvania State University Press, 1999), 82-83.

<sup>73</sup> Barry Levy, *Quakers and the American Family: British Settlement in the Delaware Valley* (New York: Oxford University Press, 1988), 110-111.

<sup>74</sup> Levy, *Quakers*, 5.

Through a series of trials and imprisonment, Penn had experienced first hand the religious intolerance inherent in the Anglican system in England, and thus set out to establish a colony where members of the sect could practice their religion freely.<sup>75</sup> It was Penn's belief that a government that promoted religious toleration would be more likely to win the loyalty and cooperation of its citizenry rather than cause dissent.<sup>76</sup> According to Penn's model, colonists could choose to follow any faith they desired or reject faith entirely without having to formally support an established church. Furthermore, daily life in the colony was virtually void of religious allusions and there were no official religious ceremonies, fasting, or public prayers.<sup>77</sup> As a result, Penn's experiment in colonization early on welcomed individuals from all corners of European and English society, allowing them to settle and prosper without an oppressive religious presence.<sup>78</sup>

The Quakers had a unique tendency to reject certain commonly accepted forms of authority such as secular governing bodies and formally-educated ministers. In order to fully understand the Quakers of Pennsylvania, other aspects of their faith must also be established. According to historian Barry Levy, the Quaker faith was built on the principle that God's Light was born into every person.<sup>79</sup> Quakers believed that the Light was hidden from the world after Adam and Eve's Fall, but Christ's crucifixion and sacrifice allowed believers another chance to

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<sup>75</sup> Jack D. Marietta, *Troubled Experiment: Crime and Justice in Pennsylvania, 1682-1800* (Philadelphia, University of Pennsylvania Press, 2006), 8.

<sup>76</sup> Marietta, *Troubled Experiment*, 14.

<sup>77</sup> Marietta, *Troubled Experiment*, 4.

<sup>78</sup> Levy, *Quakers*, 59; Marietta, *Troubled Experiment*, 8.

<sup>79</sup> Levy, *Quakers*, 5; Craig W. Horle, *The Quakers and the English Legal System, 1660-1688* (Philadelphia, University of Pennsylvania Press, 1988), 4.

recognize and receive the Light.<sup>80</sup> Such a revolutionary religious concept required a rejection of traditional Anglican, Biblical, and ministerial authority, as well as an embrace of all things based on love and compassion.<sup>81</sup>

Related to these unique ideals was a strong sense of equality between the sexes. Quakers believed in what Levy terms the “spiritualization of marriage.”<sup>82</sup> A Quaker marriage was based on the ideal of a relationship between the sexes as if the Fall and the subsequent punishments had never occurred. Therefore, Levy states that “women were to be spiritually equal to men in marriage, not ‘weaker vessels.’”<sup>83</sup> While women were organized into separate meetings from Quaker men, their position within the Quaker community was undeniably important. Women were given authority over matters deemed feminine such as sex, marriage, childbirth, and childrearing.<sup>84</sup> Women answered to their superiors in the women’s circle instead of masculine authority, while men were required to appear obediently and submissively before the women’s meeting before they would be allowed to marry.<sup>85</sup> Clearly, this is a drastically different ideology than Puritan religious doctrine.

As a result of Quakerism, colonial Pennsylvania was based on an entirely different system and set of values than any other American colony. Such differences had profound effects on the status and position of women within Pennsylvania

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<sup>80</sup> Horle, *Quakers*, 5.

<sup>81</sup> Levy, *Quakers*, 49.

<sup>82</sup> Levy, *Quakers*, 13.

<sup>83</sup> Levy, *Quakers*, 71; See also Karin Wulf, *Not All Wives: Women of Colonial Pennsylvania* (Philadelphia: University of Pennsylvania Press, 2000), 58 and Godbeer, *Sexual Revolution*, 35.

<sup>84</sup> Levy, *Quakers*, 13, 78; Wulf, *Not All Wives*, 59.

<sup>85</sup> Levy, *Quakers*, 79.

society. Speaking about the colony's principal city, Philadelphia, historian Karin Wulf states: "the city's early culture, affected in large measure by the presence of religious groups such as Quakers and Moravians who held alternative views of gender and marriage, provided a more expansive space for the development of positive models of femininity outside marriage."<sup>86</sup> Wolf argues that women in colonial Pennsylvania enjoyed a far greater sense of independence than women in other colonies like Massachusetts or Rhode Island.<sup>87</sup>

These egalitarian gender ideas wound their way into the colony's institutions. In her book *Sex Among the Rabble*, historian Clare Lyons notes that one consequence of Pennsylvania's gender concepts was the "largely unregulated" institution of marriage. Colonists had to observe certain ways marrying, however these rules were not concrete. The law allowed for the exclusion of various religious groups from such statutes due to long-established customs. Lyons even cites the frequency of a phenomenon known as self-divorce among the colonists.<sup>88</sup> Lyons also notes that colonial Pennsylvanian courts in the late colonial period severely curtailed their interference in the sexual actions of the colonists, sensing an overwhelming belief that sexual misdeeds were to be addressed solely by the church.<sup>89</sup>

In his book *Troubled Experiment: Crime and Justice in Pennsylvania, 1682-1800*, historian Jack D. Marietta notes that Pennsylvania's dedication to "liberty of

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<sup>86</sup> Wulf, *Not All Wives*, 2.

<sup>87</sup> Clare A. Lyons, *Sex Among the Rabble: An Intimate History of Gender and Power in the Age of Revolution, Philadelphia, 1730-1830* (Chapel Hill: University of North Carolina Press, 2006), 6.

<sup>88</sup> Lyons, *Sex Among the Rabble*, 35, 14.

<sup>89</sup> Lyons, *Sex Among the Rabble*, 76, 83.

conscience” referred to less of a focus on spiritual-based offenses than was present in the codes of Massachusetts Bay.<sup>90</sup> He goes on to question whether or not this toleration extended to crimes of sexual misconduct. Marietta concludes that while a portion of the early Pennsylvania codes prohibited various immoral actions such as bastardy, fornication, sodomy, bestiality, and incest, the prosecutions rates for these crimes in Pennsylvania did not come close to the frequency they were prosecuted in other colonies such as Massachusetts.<sup>91</sup> However, Marietta notes that after the Quaker population fell to a minority around 1710, even this weak commitment to the enforcement of these laws, as well as the severity of sentencing and punishment, gradually began to diminish as the sect recognized that pressing such a diverse population to adopt their own standards of behavior was no longer a viable option.<sup>92</sup>

Quaker gender equality and the lenient approach of the Pennsylvania courts provide a stark contrast to the invasive nature of Puritan institutions in Massachusetts Bay. That so many different interpretations of the appropriate interaction of religion, law, and gender could exist in colonies so closely located proves to be a fascinating experiment into the variety of human experience in the colonial period. One must be cautioned against confining all colonial communities to the popular Puritan standard, however. A comparison of these three different, yet intimately connected faiths and governments provides an intriguing look into the complexities of life during this period. The first step in this comparison is to

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<sup>90</sup> Marietta, *Troubled Experiment*, 14.

<sup>91</sup> Marietta, *Troubled Experiment*, 39-43.

<sup>92</sup> Marietta, *Troubled Experiment*, 80-82.

examine the sexual deviance laws of each of the three colonies that specifically concern women. While each colony had different ideas of the proper interaction between church and state, each colony did regulate the sexual behavior of its communities in one way or another. Examining the provisions and punishments of these laws allows one to determine each colony's official stance on matters regarding female sexuality and the degree to which it was acceptable for the courts to intervene in such matters. A comparison of these three sets of sexual misconduct laws, in terms of their language, reach, and penalty, will detect subtle differences that support the earlier claims concerning each colony's stance on the relationship between church and state, as well as the consequences such differences bore on the lives of colonial women.

### **Massachusetts Bay Colony**

Given the colony's primacy in the region, its particularly straightforward stance on sexual misconduct, as well as the ecclesiastical reach of its judicial system, the laws of the Massachusetts Bay Colony seem to be an acceptable starting point for such a discussion. The colony's first set of law codes, *The Laws and Liberties*, covering the years 1641-1691 included in its "Note to Citizens" Biblical precedent for the constituting and executing of law. The section noted that God gave laws to Israel because "a commonwealth without lawes is like a ship without rigging and

steerage.”<sup>93</sup> Their self-proclaimed communal responsibility was to “frame our Civil Politie, and lawes according to the rules of his most holy word” and thereby “fulfill the Law of Christ.”<sup>94</sup> Thus, the colony’s leaders attempted to create a godly community based on precedents from the Bible. As such, they believed that it was their duty to exterminate the corrupt tendencies inherent in each man and woman, as much as possible within humanity’s sinful state.<sup>95</sup> Jack Marietta supports this notion when he draws the crucial distinction between Massachusetts and Pennsylvania sex laws from Massachusetts’s insistence of religious precedent and reasoning as the basis for its legal code.<sup>96</sup>

*The Laws and Liberties* first detailed those crimes which were deemed inexcusably threatening to the social order of the colony: capital crimes. It is telling that five of the roughly a dozen capital laws were concerned with sexual misdeeds. The sexual offenses that warranted punishment by death, according to the Massachusetts courts were sodomy, bestiality, adultery, sexual intercourse with a girl under the age of ten, and rape.<sup>97</sup> Three of these five offenses derived their authority from Biblical precedent, as was cited at the conclusion of each law. Of the two crimes relating to female sexual misconduct (bestiality and adultery), adultery owed its very definition to the threat of feminine sexual deviance. The first documented Massachusetts adultery law, of 1641-1691, states: “If any person

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<sup>93</sup> John D. Cushing, ed., *The Laws and Liberties of Massachusetts, 1641-1691: A Facsimile Edition, Containing Also Council Orders and Executive Proclamations*, 3 vols. (Wilmington: Scholarly Resources, Inc., 1976), 5.

<sup>94</sup> Cushing, *Laws and Liberties*, 5-6.

<sup>95</sup> Godbeer, *Sexual Revolution*, 21.

<sup>96</sup> Marietta, *Troubled Experiment*, 82.

<sup>97</sup> Cushing, *Laws and Liberties*, 5.



committeth adultery with a married or espoused wife, the Adulterer, and the Adulteresse, shall surely be put to death.”<sup>98</sup> Therefore, the illicit sex would only be termed adultery in the event that a married woman were to seek sexual intimacy outside of her marriage covenant. If a married man had illicit sex with a single woman, the term of adultery would not apply. The authority for this law, as well as many of the other capital offenses, was the scriptural precedent of the books of Leviticus and Deuteronomy, demonstrating that the colonists originally based their legal code on the law set out by God in scripture.

In 1694, the adultery statutes were updated, most notably removing the potential of penalty of death and the scriptural citations. However, these later law codes were significantly more detailed in their written explanations of the moral precedent that had provoked the law. In the process of introducing the law, the 1694 version explained that “the violation of the Marriage covenant is highly provoking to God, and destructive to families.”<sup>99</sup> In doing so, the document cited two of the most crucial Massachusetts institutions as being directly threatened by the sin of adultery. While the law still adhered to the traditional definition of adultery as sexual intercourse between a man and a married woman, it did take care to account for reasonable doubt and unforeseen circumstances. Firstly, the text clarified what in the first version was simply termed the act of adultery. The new text specifically cited two possible offenses: one of a man being found in bed with the wife of another man and that of undeniable proof of the act of adultery. However, the law

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<sup>98</sup> Cushing, *Laws and Liberties*, 5.

<sup>99</sup> John D. Cushing, *Massachusetts Province Laws, 1692-1699* (Wilmington: Michael Glazier, 1978), 81.

included a safety provision for the first offense in the event that one party had been surprised or did not consent. Therefore, there seems to be an attempt in terms of the language to clarify and make more lenient what was previously a shockingly harsh, unyielding sentence. The more thoroughly defined religious reasoning behind the laws requires further investigation.

Furthermore, in terms of penalty, the 1694 version of the law is significantly more lenient. The punishment of death was largely removed from the provision. Instead, for a man having been found in bed with another's wife, the law recommended a punishment of whipping with up to thirty lashes. For the explicit sin of adultery, the law required that offenders stand on the town gallows for an hour with a rope draped symbolically around their neck, submit to a whipping of up to forty lashes, and the perpetual donning of a capital letter "A" on their clothing. What is interesting about this updated version of the law is the great care the writers took in detailing specifically how the punishments were to be carried out. The "A" was even dictated to be two inches long, of "proportionable bigness," and of a contrasting color to the offender's clothing. The statute also set out a punishment in the event that the offender was caught without his or her letter being displayed, an oversight that would cost fifteen lashes.

Also deviating from the original adultery law was a significant expansion of the types of behavior that constituted the term adultery. Not only did adultery refer to sexual intimacy of a man and a married woman, it would also now refer to polygamy, or unsanctioned remarriage. While Puritans allowed for divorce on some grounds, such a privilege did not always carry with it the blessing of remarriage.

This new subsection of adultery was the only offense under the umbrella term that brought with it a penalty of death. However, even in this instance, the law accounted for certain justifiable circumstances. Exemption was allowed for those whose husband or wife had unpromisingly remained “beyond the seas” for seven consecutive years, those who had been abandoned by their spouse for a period of seven years, and those whose marriage had been declared void for any reason.<sup>100</sup> The section of the law was also revised again to reduce the waiting period from a consecutive seven years to three around the year 1697.<sup>101</sup>

The revisions of the adultery law demonstrate a few key changes in the beliefs of Massachusetts’s magistrates concerning sexual misconduct. The most obvious change is the elimination of the death penalty for all adultery-related crimes excepting that of polygamy. It can be inferred from this alteration that the magistrates were reluctant to proscribe so severe a sentence as in the first version or that Puritanism may have been on the decline in the colony. For that reason, both the death penalty and the scriptural citations were removed in the revised 1694 edition. Furthermore, there was a noticeable effort to make the text at once fair and specific. Explanation, exceptions, and procedure were all spelled out in order to ensure fairness. As a result, one could expect more equitable proceedings in the courtroom as the law allowed for a variety of situations and circumstances.

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<sup>100</sup> Cushing, *Province Laws*, 81.

<sup>101</sup> Cushing, *Province Laws*, 150-151; *The Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay*. Vol. 1. Boston: Wright and Potter, 1869. “Acts 1692-1714.” Massachusetts Acts and Resolves 1692 to 1959. *Mass.Gov*. N.d. <http://www.mass.gov/anf/research-and-tech/gov-data-and-docs/state-docs-and-resources/state-docs-online/ma-acts-and-resolves/massachusetts-acts-and-resolves-1692-to-1959.html>, 354.

The second sex-related capital crime that might concern women was that of bestiality. It was the first sex-related felony in the 1641-1691 list and stated, "If any man or woman shall lye with any beast, or bruit creature, by carnall copulation, they shall surely be put to death; and the beast shall be slaine, and buried." This law cited the same chapter of Leviticus as adultery.<sup>102</sup> The bestiality law also underwent changes throughout the years as the Bay Colony matured in terms of governmental and judicial sophistication. The first change came in 1672, with the inclusion of a clause specifically outlawing the eating of any animals killed due to their association with the crime of bestiality.<sup>103</sup> Rather than a slight lessening of religious intensity as seen in the adultery law, this revision seems to be fully laden with spiritual significance. The only logical reason for forbidding the eating of a beast slain for the sin of bestiality would be the possibility of a transferring of sin or uncleanness from beast to consumer.

Around the year 1697, the law was updated again to reflect the tendency toward more specification of legal language. The new version established a motive for the law first and foremost, that of "avoiding of the detestable and abominable sin of Buggery with Mankind [or] Beast, which is contrary to the very Light of nature."<sup>104</sup> As is obvious, the new version combined the two previously separate capital crimes of sodomy, or sexual intercourse between two men, and bestiality. In terms of penalty, both types of offenders under this law were ordered to suffer the

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<sup>102</sup> Cushing, *Laws and Liberties*, 5.

<sup>103</sup> Cushing, *Laws and Liberties*, 240; Animals involved in bestiality cases were usually executed by the courts.

<sup>104</sup> Cushing, *Province Laws*, 114.

pains of death and the animal was to be killed and burned rather than buried as in the original version.<sup>105</sup>

While the scriptural citations were removed from the listing of both crimes in the code, the magistrates took care to include their specific reasoning behind each provision and penalty, a reasoning that was heavily religious. The text directly linked the preservation of the sanctity of marriage to God's pleasure in mankind. In the revised bestiality law, the text cited the detestable nature of the crime, explicitly using the word "sin" in the description. Therefore, while it may appear that the Massachusetts's legal system was deviating from its original religious origins, those sentiments were still implied, if not specifically cited. While one can speculate as to larger reasons for this shift, in order to determine community sentiment, one must take a closer look at the law as carried out in the courtroom.<sup>106</sup>

Apart from these serious capital crimes, or felonies, the Massachusetts magistrates also set about to dictate less serious offenses, termed misdemeanors.<sup>107</sup> Of the misdemeanors associated with sexual misdeeds, the most frequent by far was that of fornication.<sup>108</sup> The first recorded Massachusetts fornication law from 1642 cited the punishment for couples convicted of fornication as "enjoyning to Marriage, or fine, or corporall punishment," or a combination of the three as determined by the courts to be "most agreeable to the word of God."<sup>109</sup> Again, the original law was

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<sup>105</sup> Cushing, *Laws and Liberties*, 114; *Acts and Resolves*, 297.

<sup>106</sup> Some historians have argued that Puritanism began a noticeable decline after the 1660s. For a more complete discussion of this issue see: Anderson, *New England's Generation*, 191-201

<sup>107</sup> Hindus, *Prison and Plantation*, 49.

<sup>108</sup> Nelson, *Common Law*, 57.

<sup>109</sup> Cushing, *Laws and Liberties*, 29, 103.

impregnated with religious precedent and significance. The requirement of marriage is a clear reference to Biblical law, while the direct invocation of the word of God also shows religion's effect on the statute.

In 1665, the law was clarified due to an apparent contradiction between it and another law. The revision was simply meant to reaffirm the punishment dictated by the original fornication law and to disregard those described in the other section of the legal code. However, the language used to explain and justify this decision reveals the continued religious origins of the law. The justification of the punishment of fornication, as laid out by the magistrates, was that the original law referred to one specific crime. However, they did not stop at that clarification but went on to describe the crime in heavily religious terms. In the revision, fornication was referred to as "a shameful Sin, much increasing amongst us, to the great dishonour of God." Furthermore, the revision granted to the courts the authority of adding disfranchisement to the punishment of any freeman that had been convicted of the crime.<sup>110</sup>

The 1665 revision reveals a few significant facts about law and religion in colonial Massachusetts. First, as with the laws regarding adultery and bestiality, the language of the law was crafted to evoke a degree of shame and fear based on religious principles. The language of the law code directly reminds colonists that the crime of fornication was a sin against God, but also that it was dangerously increasing in frequency among the community of believers. Furthermore, the law directly links the religious and political lives of the colony's free men by including

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<sup>110</sup> Cushing, *Laws and Liberties*, 178.

the threat of disfranchisement. Therefore, a man's spiritual faults could have a direct effect on his inherent rights as a freeman within the community. Also, the code explicitly gave the courts the ability to enact disfranchisement depending on the religious righteousness of the citizen in question.

The fornication law was revised a third time in 1692. In this final version, the penalty required by the law was reduced to a fine of 5£ or corporal punishment of up to ten lashes.<sup>111</sup> Conspicuously lacking from this final version of the law was any requirement of marriage or any other religious language directly referring to the crime as a sin. By 1692 a lessening of punishments for sexual offenses was well underway as well as a simplification of the language used to describe sexual crimes in the official record. This trend reflects a larger movement toward more sexual freedom and/or privacy as well as a more secular-leaning New England community.

Directly related to fornication laws were the colony's bastardy and infanticide laws, which received a great deal of attention during the first decade of the colony's existence. There was no mention of dealings with bastard children associated with the 1642 fornication statute. In 1668, however, an act was published in addition to the fornication law to require the father of a bastard child to ensure the financial security of the child. Crucial to such a provision was a way of discovering the identity of the father. The act established as adequate proof of paternity a woman's repeated assurance of the father's identity during labor, or "in the time of her Travail."<sup>112</sup> The same requirements and responsibilities were maintained in the next version of Bay Colony laws published in 1692, however an

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<sup>111</sup> Cushing, *Province Laws*, 29-30; *Acts and Resolves*, 52.

<sup>112</sup> Cushing, *Laws and Liberties*, 205; *Acts and Resolves*, 52.

explanatory clause was included in regards to the father's obligation to pay for the support of the child: "to absolve the town from responsibility."<sup>113</sup> Such a statement might suggest a gradual shift away from strictly moral considerations to those of a more economic nature, as the maintenance of increasing scores of fatherless children would surely have had a devastating effect on the economic well being of the community.<sup>114</sup>

Directly connected to these fornication and bastardy statutes were the laws regarding the murdering or concealing of the death of bastard children. There was no mention of such a law until 1696, suggesting perhaps a lack of frequency of this crime and therefore no need for a specific law regarding infanticide, or perhaps a stigma associated with bastard offspring that may have predisposed the magistrates to be less concerned with prosecuting such cases. The first law, titled "An Act to Prevent the Destroying and Murthering of Bastard Children" cited the existence of "many lewd women" who took it upon themselves to avoid shame by killing "either by Drowning or Secret Burying" their illegitimate children or "to conceal the Death thereof."<sup>115</sup> The penalty for such a crime was to be death, as in cases of Murder, unless the child could be proven without a doubt to have been knowingly stillborn.<sup>116</sup>

In order to subvert the various charges and punishments describe above, the Bay Colony's magistrates set about to establish various laws concerning marriage so that the people could be directed toward more sanctioned forms of intimacy and

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<sup>113</sup> Cushing, *Province Laws*, 29-30.

<sup>114</sup> Pagan, *Anne Orthwood's Bastard*, 4, 6, 103-115.

<sup>115</sup> Cushing, *Province Laws*, 108.

<sup>116</sup> Cushing, *Province Laws*, 108; *Acts and Resolves*, 55, 255.



procreation. Massachusetts's law required couples to state their intent to marry multiple times before the actual contract was established, in order to prevent secret entreaties, elopements, or adultery.<sup>117</sup> In 1695, the magistrates took the requirements a step further and outlawed various types of incestuous unions. The law began with yet another explanatory clause heavy with religious significance: "Although this Court doth not take in hand to determine what is the whole Breadth of the Divine commandment respecting unlawful Marriages. Yet for preventing of that abominable Dishonesty and Confusion which might otherwise happen."<sup>118</sup> The text goes on to list a myriad of relations for which were deemed illegal.

If such a marriage did occur, it was declared void, and any children produced from such a union were stripped of their right to inherit. Further punishments included placement upon the gallows for the span of one hour, a maximum forty lashes corporal punishment, or the perpetual wearing of the capital letter "I," carrying with it a maximum of fifteen lashes corporal punishment in the event that the letter was not worn. The law did account for those couples already married at the time of the law's publishing whose union would be then declared illegal. Such couples were required to separate before the end of a forty-day grace period or suffer the punishments of adultery and polygamy.<sup>119</sup> The law also included requirements concerning the actual marrying of couples as well as a section outlawing cross-dressing by both sexes.

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<sup>117</sup> Cushing, *Laws and Liberties*.

<sup>118</sup> Cushing, *Province Laws*, 94-95.

<sup>119</sup> Cushing, *Province Laws*, 95-96.

The timing of the law code revisions in the Bay Colony are telling. The majority of the laws were revised in the early years of the 1690s, suggesting a collective effort to clarify criminal laws and establish a more specific religious precedent for many. One possible explanation for this phenomenon comes from Virginia Anderson's critical work, *New England's Generation*. At the close of her argument, Anderson discusses the tensions that arose between the first generation of New Englanders and subsequent generations. According to Anderson, the first generation took their religious responsibility to extreme levels so that once they began to be phased out by the second generation, the founders felt an overwhelming urge to admonish and advise their maturing offspring. Anderson notes the numerous jeremiads preached by Puritan ministers in which they highlighted and condemned the failures of this new generation to maintain the level of righteousness demonstrated by their forefathers.<sup>120</sup>

Furthermore, inherently tied to the fears of the first generation were a series of devastating crises that began to plague New England after the decade of the 1660s.<sup>121</sup> The most significant of these events concerns New England's relationship with local Native American tribes. Beginning in 1675 with King Philip's War, the next couple of decades were periodically punctuated with devastating Indian raids, wars, and crises such as the Salem Witch Trials. Many of New England's citizens both old and young interpreted these events as physical proof of God's displeasure and judgment upon their communities.<sup>122</sup>

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<sup>120</sup> Anderson, *New England's Generation*, 178.

<sup>121</sup> Anderson, *New England's Generation*, 191.

<sup>122</sup> Anderson, *New England's Generation*, 194.

Anderson makes a compelling argument for the insecurity of both the old and new generations, prompting ministers and magistrates to promote morality and righteousness of a more heightened degree. It is a logical assumption that such a tendency would extend to areas beyond that of the ecclesiastical realm especially since that realm encompassed most of New England society. It has already been established that there was a conscious effort of refining and specifying the sex laws of the Bay Colony during the time in which the second generation began to rise to prominence in the colony.

Anderson's argument cites this reform movement occurring during the 1660s and 1670s, but most of the revisions of these sexual misconduct laws did not occur until the 1690s. However, there are a number of logical explanations for this phenomenon that do not discredit Anderson's claims. It is a reasonable assumption that the sheer amount of terror and destruction plaguing the colony would have stunted the formal process of calling together an Assembly to elevate laws to a new standard of piety in the midst of such turmoil. While the actual events were occurring, the magistrates were most likely dealing with various immediate effects of war. It is for this reason that the first method of righteous reprimand would occur at the hand of the ministers, as Anderson noted, in the form of jeremiads. After the second generation had been properly reproached and convinced of their duty to mirror the first generation's level of piety, they could then set about bring the remainder of the colony in line with their newly agreed upon standards of morality in order to prevent future misfortunes. Therefore, while the revisions of the laws do

not appear until later in the historical record, their inspiration must have developed out of this same atmosphere of heightened religious sensitivity and anxiety.

### **Rhode Island and Providence Plantation**

The legal records of the Massachusetts Bay Colony have been remarkably preserved and made widely available to scholars. The records of colonial Rhode Island and Pennsylvania, however, are not as complete. Since the colony of Rhode Island shared an ideological connection with the Bay Colony as well as borrowed a significant portion of the structure and functioning of its government from it, one could logically assume that the two colonies would have similar law codes. However, it is also logical to assume that the differences that forced the Rhode Island dissenters to break away from the Bay Colony simultaneously resulted in marked differences between the two.

First, colonial Rhode Island's laws differed entirely from Massachusetts in terms of structure. Rather than initially separating crimes on the basis of severity of punishment, Rhode Island laws were organized topically. When the first law code was published in 1647, all sexually based laws were conveniently organized under the title of "the law for whoremongers."<sup>123</sup> The common law described the category as follows: "Under the law for whoremongers and those that define themselves with mankind, being the chief of that nature, are comprehended those laws that concern sodomy, buggery, rape, adultery, fornication and their accessories."<sup>124</sup> Further along

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<sup>123</sup> John D. Cushing, *The Earliest Acts and Laws of the Colony of Rhode Island and Providence Plantations, 1647-1719* (Wilmington: Michael Glazier, 1977), 14-15.

<sup>124</sup> Cushing, *Earliest Acts*, 15.

in the code, each subcategory of crime under the “whoremonger” category was detailed in terms of definition and punishment. It is significant that this initial introduction of sexual misconduct did not invoke the name of God or any religious connotation. That changed when the individual laws were expanded on in the text. However, it is significant that while the Bay Colony made citing scriptural precedent of primary importance for their first sexually related statutes, Rhode Island did not. This can be attributed to Rhode Island’s dissenting roots and aversion to the Massachusetts system of government.

The only offenses associated with female sexual misconduct were that of adultery and fornication. According to the law, both crimes were grouped together and were understood as “a vile affection whereby men do turn aside from the natural use of their own wives and do burn in their lusts toward strange flesh.” The law also stated that offenders would be judged by God for their misdeeds. The penalty of such offenses was not specified, however, the text often referred to the similar statute in effect in England.<sup>125</sup> While at first it may seem, and rightfully so, that the text cited, at least in part, a religious influence, there lies within the language a subtle, yet significant difference. The laws did mention threats of spiritual judgment, however, it implied that judgment by God was one matter and that judgment by the court was distinctly separate. While the distinction is extremely subtle, it is a very different concept than Massachusetts’s law code.

In 1655, the adultery law was revised to include specific instructions for the punishments of the offenders, effectively distinguishing its punishment from that of

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<sup>125</sup> Cushing, *Earliest Acts*, 27-30, 65.

the crime of fornication. Firstly, the offender needed to be accused by at least two witnesses to be convicted. Furthermore, the individual would be whipped with fifteen lashes in one town and, after a week's rest, fifteen more at another town depending on the location of the conviction. The offender was also required to pay a fine of 10£. If it were the individual's second offense however, he or she would be whipped fifteen lashes at each of the four towns in the colony and must pay a fine of twenty pounds. Furthermore, a second offense negated the possibility of bail for the offender.<sup>126</sup>

In 1657, the fornication statute was revised along the same lines. For the first offense, the individual was whipped for a total of fifteen lashes or must pay a fine of forty shillings. In the event that the offender was charged a second time, he or she would be publically whipped in two towns with a total of fifteen lashes each or pay a four-pound fee. In 1662, the fornication statute was updated again. First, the new law required the offender to be convicted before two assistants, wardens, or justices of the peace in the town where the infraction was committed. With regards to the new penalty, for the first offense the individual was required to be whipped publically with no more than ten lashes or to pay a fine of forty shillings to the treasury "for the use of the Poor of such Town."<sup>127</sup> No mention was made of the punishments required of a second offense. In 1665, the law was updated once more to allow for judicial discretion in matters of sentencing fornicators. The justices would now be able to determine the number of lashes up to the maximum according

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<sup>126</sup> John Russell Bartlett, *Records of the Colony and State of Rhode Island and Providence Plantations* (Boston: New England Historic Genealogical Society, 2003), CD.

<sup>127</sup> Cushing, *Earliest Acts*, 143.

to the previous law, as well as the amount of fine as long as the amount met the minimum requirement of forty shillings for the first offense and four pounds for the second.

These revisions are imbued with significance concerning the relationship between church and state in Rhode Island. First, the fact that the two crimes were separated and given distinct and conditional punishments demonstrates a more sophisticated concept of the purpose of law and the nature of criminal offenses. The new law recognized one offense as of a more serious nature than the other, and the penalties prescribed reflect such a relationship. Furthermore, there was an effort to ensure the protection of the rights of the individuals against the overarching power of the court. The adultery law stated that the offender be convicted based on the testimony of at least two witnesses, thereby protecting against false accusations and the prejudice of the court. In the fornication law, it was required that the convicted offender received his punishment in the town where the crime was committed, further protecting against unnecessary reach of the law and excessive punishment. Lastly, and arguably most significantly, there was absolutely no specific reference to any religious precedents or beliefs. The law merely identified an action and subsequently prohibited it. There was no clause or introduction explaining the reasoning behind the law and no invocation of the principles of Christianity or the word of God.

In terms of other sexual misconduct laws, Rhode Island did not seem to include women under the offense of buggery, as it was described as “a most filthy

lying with a beast as with a woman.”<sup>128</sup> The only other law dictating correct sexual action on the part of women was the statute concerning marriage. For the purpose of “preventing many evils and mischiefs that may follow” the colony of Rhode Island required publication of intent to marry in two meetings, confirmation of the engagement by town officials, and documentation of the same. The penalty for offenders seems to only relate to men being that they must pay five pounds to the woman’s parents and “be bound” to good behavior. Accessories to the offense must also forfeit five pounds each to their respective towns.<sup>129</sup> Beginning in 1656, the law also aimed to protect against the contracting of incestuous marriages by declaring them void according to the degrees established by English law and proscribing the punishment of adultery to offenders.<sup>130</sup>

Yet again, it is significant that this law did not make any reference to God or religion. This absence of spiritually charged language, as well as the absence of many sexually related laws that existed in the Bay Colony attests to Rhode Island’s commitment to the separation of church and state. While the principles are not explicitly stated, they are still clearly implied and must have been widely internalized by the community due to its Puritan roots. It has already been determined that Williams ascribed to the necessity of government in maintaining a moral and well-behaved citizenry. As such, one cannot logically expect the colony to have eliminated all types of sexual deviance from its law codes given the moral standards of the time. However, it will be determined in Chapter Two whether or

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<sup>128</sup> Cushing, *Earliest Acts*, 26.

<sup>129</sup> Cushing, *Earliest Acts*, 41-42.

<sup>130</sup> Bartlett, *Records*.



not this trend had any effect on the frequency with which women were convicted of sexual deviance and the severity of their sentencing.

## **Pennsylvania**

Colonial Pennsylvania's law code from the very beginning lumped the crimes of adultery, fornication, and bastardy together in one act. The act was described as being "For the Preservation of Vertue, Chastity and Purity amongst the Inhabitants of this Province, and Prevention of the heinous sins of Adultery and Fornication."<sup>131</sup> For the first offense of adultery, the individual was sentenced to twenty-one lashes as well as one-year hard labor in prison or a fine of fifty pounds. In the event of a second offense, the individual would receive the same number of lashes and either seven years in prison with hard labor or a one hundred pound fine. For the third and subsequent cases, the offender received the same punishment as the second offense and was also branded with a letter "A." The injured husband or wife of the offender was also granted a "Bill of Divorce" in all cases. Under the same act, for the crime of fornication the offender must receive twenty-one lashes or pay a fine of ten pounds.<sup>132</sup>

This first law code also referred to the crimes directly as "sins" thereby belying the inherently religious nature of the statute and the strong Quaker influence in the early years of the colony.<sup>133</sup> Furthermore, the law specifically mentioned the traditionally Christian values of chastity, purity, and virtue as being

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<sup>131</sup> John D. Cushing, *The Earliest Printed Laws of Pennsylvania, 1681-1713* (Wilmington: Michael Glazier, 1978), 41.

<sup>132</sup> Cushing, *The Earliest Printed Laws*, 41-43.

<sup>133</sup> Marietta, *Troubled Experiment*, 39-42.

threatened by such actions, which also suggested that it was the responsibility of the court to protect such values. Pennsylvania's adultery and fornication law is significant because, in terms of severity, it falls between the laws of Massachusetts and Rhode Island. Furthermore, this original act was the only act published regarding these two sex crimes and there were no revisions. This suggests that the focus of colonial magistrates in Pennsylvania turned away from such sexual misdeeds gradually relegating them more to the realm of communal and familial regulation. As with the assumptions concerning the other two colonies, however, such a statement cannot be confirmed without a thorough examination of the colony's court records.

The act also discussed the law in regards to illegitimate children. The law stated that the physical evidence of a single woman having born a child would be enough evidence to convict her of fornication. The law continued with the common method of asking for the name of the father during the woman's labor. The physical evidence of the child along with the woman's accusation was also determined to be enough evidence for the court to convict the man of fornication. The text also accounted for the event of a woman having a child in the absence of her husband, a woman who attempted to avoid retribution by delivering her child in a distant town, and the event that the woman in question was an indentured servant.<sup>134</sup> In 1718, the last of the sexually related laws published in Pennsylvania before 1750 was concerned with infanticide and the concealment of the death of bastard children.

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<sup>134</sup> Cushing, *Earliest Printed Laws*, 41-43.

The law followed exactly the same definition, process, and punishments as that of Massachusetts.<sup>135</sup>

The most detailed laws concerning the sexual license of colonial Pennsylvanian women were related to the institution of marriage. The first of such acts, *The Act for the Preventing of Clandestine Marriages*,” attempted to avoid “clandestine, loose and unseemly proceedings” among the colonists. According to the law, couples intending to marry must provide proof of their engagement to either their parents, their respective religious organizations, or a Justice of the Peace as well as publish the announcement to a public meeting house at least one month before the wedding, and must also have a minimum of twelve witnesses to the contract. The act further detailed the fees that were to be paid to the masters of indentured servants who wished to be married in order to account for the loss of service.<sup>136</sup>

A second act, entitled *An Act Against Incest*, aimed to detail the various types of marriages that were deemed against the law based on what is termed the “table of Degrees of Consanguinity of Affinity.” Degrees of consanguinity referred to individuals that were directly related by blood, while degrees of affinity referred to individuals who became related by marriage but did not share a bloodline. If a couple was found to be in violation of the law, the courts had the authority to dissolve the marriage by granting a bill of divorce, and the offenders could be charged with and punished along the same prescriptions as the laws concerning

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<sup>135</sup> Pennsylvania, *Pennsylvania Colonial Session Laws* (S.l: s.n.], 1700), 113.

<sup>136</sup> Cushing, *Earliest Printed Laws*, 31-32.

fornication and adultery.<sup>137</sup> The third and final act regarding marriage aimed to address the issue of bigamy. The law stated that “whosoever shall be convicted of having two wives or two husbands, at one and the same time” would be punished with thirty-nine lashes corporal punishment as well as life in prison performing hard labor. The second marriage of the individual would be declared void with the second spouse also being punished accordingly, while the first spouse was granted a bill of divorce if so desired.<sup>138</sup>

The final sexually themed statute was the law against sodomy and bestiality. According to the law, if the offender were of the (unspecified) age of consent, the required punishment would be a prison sentence with hard labor as well as a regularly scheduled whipping of thirty-nine lashes every three months during the first year of imprisonment. Also, if the offender had been married, the spouse would receive a bill of divorce.<sup>139</sup> The law was not very detailed in terms of definition of the offense or explanation of the reasoning behind its illegality, and it was not clear whether or not women were considered as possible offenders.

Historian Jack Marietta has speculated on the existence of these various types of sexual misconduct laws within Pennsylvania’s legal codes. While he admits that the Quaker tradition of tolerance resulted in fewer and more lenient sex laws, he also is careful to note the strong presence of the sect in the early years of the colony’s formation.<sup>140</sup> Therefore, while Penn set about to create a colony in which diverse peoples could come to practice their own beliefs, there was still a noticeable

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<sup>137</sup> Cushing, *Earliest Printed Laws*, 40-41.

<sup>138</sup> Cushing, *Earliest Printed Laws*, 43.

<sup>139</sup> Cushing, *Earliest Printed Laws*, 43.

<sup>140</sup> Marietta, *Troubled Experiment*, 14.

effort to urge colonists to conform to Quaker concepts of sexual morality. However, Marietta does note that Quaker prominence began to slip around the year 1710, which might explain why the only sexually themed law to be written after that related to infanticide and not necessarily a sexual act. As Quakers became less dominant in Pennsylvania and more diverse groups began to capitalize on their ideal of religious tolerance, Quaker push for uniform morality also began to wane.

However, this gradual lessening of the severity and frequency of sexual deviance laws occurred in each of the colonies presented. Therefore, a more in-depth analysis must be undertaken. Clearly, each colony's original law codes reflect in some sense their origins and motivations. Massachusetts's laws were scripturally precise and unyielding as the initial generation of Puritans still retained the confidence and zeal of their righteous experiment. Rhode Island's laws contained fewer sexual laws, yet still retained some reflections of Puritan morality. However, this was probably more reflective of Williams' concepts of universal morality given his intense aversion to Puritan forms of government. Pennsylvania, too, included fewer sexually themed laws than did Massachusetts, but as Marietta mentioned, still relied upon Quaker concepts of morality initially.

Both Massachusetts and Rhode Island sex laws underwent significant changes over the course of this period. However, Rhode Island's revisions were focused on a lessening of punishment, fairness of sentencing, and marked secularization, while Massachusetts's revisions focused more on clarifying religious intent and reasoning. Therefore, while both colonies experienced a lessening of severity, they each also continued to maintain their respective traditions of either

the spiritual responsibility of government or the separation of church and state. Pennsylvania, on the other hand, was the only colony which was not preoccupied with revising and clarifying its sex laws. This points to Marietta's claim to diminishing Quaker influence. If the laws were created by and for Quakers, it is logical that such laws would not be carefully revised and maintained as the colony progressed in later years.

Another factor that must be assessed is severity of punishment as it relates to the frequency of occurrence of the laws. The relationships between the colonies in terms of punishment, variety of law, and frequency of revision can be thought of in terms of gradients. Regarding punishments, the severity diminished as one progressed from Massachusetts laws to that of Pennsylvania and then to Rhode Island. Massachusetts's position as most severe is logical given that it fully incorporated Puritanism into the realm of secular government. While Pennsylvania was dedicated to religious tolerance and a lack of established religion, the colony was still founded upon Quaker beliefs and the sect enjoyed unrivaled prominence in the colony's early years. Rhode Island's position also makes sense given the aversion of its founders to the ways Massachusetts fully combined church and state. Yet, sexual misconduct laws were not eliminated entirely in Rhode Island because of a need to uphold accepted standards of morality. In terms of variety of sexual misconduct laws, the gradient reflects the same pattern.

Clearly, each of these colonies believed that (to some degree) it was the responsibility of the courts to police sexual activity and the formal declaration of intimacy in the institution of marriage. However, while there were similarities

among the three, there were also marked differences. Colonial Pennsylvania's laws focused more on the preservation of the institution of marriage than the sexual license of the individuals. Furthermore, Pennsylvania made use of an institution that remained unmentioned in the law codes of the other two colonies: prison. The laws of colonial Pennsylvania seem most similar to Rhode Island's later laws, in that they are very specific without much reference to religious themes or values. While Rhode Island may have begun along the same lines as Massachusetts in terms of religiously charged language, it made a much more pronounced effort to strip its laws of such connotations and make them secular. Massachusetts did lessen their religious severity over time, but the laws maintained a largely constant connection to religious principles and ideology.

Much can be presumed about the inspiration behind these subtle changes in the language of the text or the severity of the punishments, but they are educated guesses at best. While Anderson's argument regarding New England generational tensions may reveal the reasoning behind the later revisions of sex laws, there does not seem to be any similar causes explaining the revisions of the other two colonies. Without an examination of the court records of these colonies, these assumptions cannot be proven with any certainty. Written acts and statutes represent a formal declaration of the official position of the colonial governments on matters that they deemed crucial to their communities. Court records, however, demonstrate how the ever-changing leaders of these colonies responded to deviant circumstances in daily life as well as how they applied the official laws to real world situations.

The next chapter will focus exclusively on an examination of the court records of a few representative counties in each colony. The cases that will be examined are those relating to fornication, adultery, bastardy, and improper marriage practices, as well as bestiality if applicable. These cases will be presented and compared to the official written laws to determine any differences in sentencing and punishment. They will also be examined in a larger sense throughout the period to determine if there was any noticeable change in the frequency of sentencing or severity of punishment of these sexually deviant women. After such an examination, one can comment with more certainty on trends representing changes in the laws, as well as the relationship between church, state, and gender in each colony.



## **II. The Law as Practiced: The Representation of Popular Opinion in Feminine Sexual Misconduct Proceedings**

Much can be speculated from the language and proscriptions of the law codes of colonial Massachusetts, Rhode Island, and Pennsylvania. From the analysis in the first chapter, it is clear that the colonies existed on a gradient of sorts whereby Massachusetts was the most severe and exacting, followed by Pennsylvania, and then Rhode Island. In order to confirm this trend, an examination of the available court records for each colony is imperative. Once the records are assembled, applicable trends emerge as magistrates and officials interpreted the law and applied them to fit each colony's unique legal and social environment. In a way, law as practiced provides more insight into the values and norms of the communities than does the law as written.

### **Massachusetts**

Massachusetts has the most complete collection of colonial court records. Several historians have published studies analyzing these records according to

many and varied qualifications. Edmund McManus includes in his book *Law and Liberty in Early New England: Criminal Justice and Due Process 1620-1692* a table charting the various laws and their punishments as dictated by the Massachusetts Assistants Court from 1630-1644. Particularly enlightening are the sexual misconduct statistics included in the table. According to McManus, fornication was the most frequent sexual deviance crime with twenty-two recorded cases. McManus also includes a division of punishments within the table. Fornication punishments were divided as follows: eight fines, twelve whippings, two orders of stocks, two badges of shame, and four miscellaneous punishments. The next most frequent crime was lewdness with fourteen cases. Of these fourteen, each punishment of fines, admonition, and the badge of shame were placed upon one individual whereas whipping was by far the most frequent punishment with ten sentences. There were also three miscellaneous punishments. There were only three recorded cases of adultery with two of the charges resulting in the punishment of death and one as whipping. The final crime was one case of attempted bestiality which was punished by whipping.<sup>141</sup>

McManus's findings are significant in that they corroborate much of what other historians have speculated about trends within Massachusetts's legal system regarding sexual offenses. McManus also discusses early Massachusetts's legal attitudes toward sexual deviance. He states that sexual misconduct was highly regulated within the Massachusetts legal system with punishments ranging from

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<sup>141</sup> Edgar J. McManus, *Law and Liberty in Early New England: Criminal Justice and Due Process, 1620-1692* (Amherst, University of Massachusetts Press, 1993), 201.

finer to hangings.<sup>142</sup> Most studies have found that fornication was by far the most frequent offense in colonial Massachusetts, a fact that is clearly represented in McManus's findings.<sup>143</sup> Historian Richard Godbeer states in his book *Sexual Revolution in Early America* that magistrates were often unwilling to prosecute crimes such as sodomy and bestiality without absolute proof of intercourse having taken place. McManus's findings also support this claim in that the one instance where there was such an offense, the courts clearly did not find enough convincing evidence to charge the deviant with the full crime and rather only sentenced him or her to be whipped.<sup>144</sup>

One particularly representative statistic within McManus's findings is in the section entitled "lewdness." There was no specific statute outlawing "lewdness," an umbrella term, which could be taken to refer to a variety of sexual offenses along a gradient of severity. Some historians have speculated that the law as practiced was significantly more lenient than the statute law itself, which might account for the existence of such a "catch-all" category.<sup>145</sup> Furthermore, it has been suggested that Massachusetts magistrates were unwilling to charge individuals with certain sexually-deviant acts such as adultery and fornication without having undeniable proof that copulation had occurred, in which case a label such as "lewdness" allowed

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<sup>142</sup> McManus, *Law and Liberty*, 53.

<sup>143</sup> Richard Godbeer, *Sexual Revolution in Early America* (Baltimore: John Hopkins University Press, 2002), 57.

<sup>144</sup> Godbeer, *Sexual Revolution*, 104-5.

<sup>145</sup> Godbeer, *Sexual Revolution*, 86, 102; Laurel Thatcher Ulrich, *Good Wives: Image and Reality in the Lives of Women in Northern New England, 1650-1750* (New York: Knopf, 1982), 94.

them to prosecute a much wider range of sexual offenses.<sup>146</sup> As a result, one can interpret this section as representing a number of cases that consisted of either sexually deviant acts not explicitly including sexual penetration, sexual acts that were specified within the law code but which the magistrates were hesitant to punish to the full extent, or a combination of the two.<sup>147</sup>

McManus's findings also are in line with the original language of Massachusetts's sex laws. The most obvious case is that of adultery. Being that his statistics came from seventeenth-century Massachusetts's, it is logical that two of the three punishments (66%) resulting from adultery charges were death, as the original adultery statute considered the crime a felony and recommended offenders suffer the "pains of death."<sup>148</sup> Furthermore, the fornication punishments also followed the law relatively closely. The original law recommended marriage or corporal punishment for the crime of fornication, which is clearly represented in McManus's findings, where twelve of the twenty-two punishments (55%) were labeled as whippings.<sup>149</sup> The original law also offered payment of a fine as a proper punishment, which is represented here with eight of the twenty-two cases (36%) resulting in fines. The four miscellaneous punishments also could possibly include a marriage requirement as dictated by the initial code.<sup>150</sup>

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<sup>146</sup> Godbeer, *Sexual Revolution*, 102.

<sup>147</sup> McManus, *Law and Liberty*, 54; Ulrich, *Good Wives*, 94.

<sup>148</sup> John D. Cushing, ed., *The Laws and Liberties of Massachusetts, 1641-1691: A Facsimile Edition, Containing Also Council Orders and Executive Proclamations*. 3 vols. (Wilmington: Scholarly Resources, Inc., 1976), 5.

<sup>149</sup> Cushing, *Laws and Liberties*, 29, 103; McManus, 201.

<sup>150</sup> McManus, 201.

What McManus's findings fail to shed light on, however, is the frequency of criminal proceedings against women accused of sexual deviance. Furthermore, his statistics are only for the first fourteen years of the colony's history, which does not represent the vast amount of changes that the laws underwent during the span of the colonial period. More complete are the primary records contained in the Quarterly Courts of Essex County. The eight-volume work spans the years of 1636 to 1683 and includes a vast expanse of criminal proceedings, many of which concern sexual misconduct. Furthermore, they provide one the opportunity to compose statistics not only for total sexual crimes and punishments in general but also statistics of gender, marital status, criminal circumstances, and the gathering of evidence. Furthermore, as Essex County was one of the most populated counties in the colony, it is representative of all types of towns in New England and provides a good sample of the colony for statistical purposes.<sup>151</sup>

The records contain a mass of sexual misconduct cases of varying degrees. As can be expected, they contain the usual, specified crimes as laid out by the statutes including adultery, fornication, bastardy, and improper marriage. However, the records also have a sizeable category labeled "uncleanness" which can be assumed to be similar to McManus's category of "lewdness." Beyond that, there were a number of other offenses prosecuted to varying frequency including filthy or uncivil carriages, immodesty, kissing, lasciviousness, and wanton dalliance. The most common offense was fornication, which is in line with much of the current historiography concerning Massachusetts's sexual misconduct laws. The crime was

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<sup>151</sup> Kyle F. Zelner, *A Rabble in Arms: Massachusetts Towns and Militiamen During King Philip's War* (New York: New York University Press, 2009), 16-17.

so frequent that it was divided into two categories: fornication between two uncommitted individuals and fornication between two individuals that were betrothed or in some way committed to marriage. Each group had upwards of one hundred cases being presented before the court from 1636-1683. The second most frequent crime after fornication was that of bastardy, with roughly thirty cases being tried during the six-decade account. Uncleaness was next in frequency with twenty-one cases. The remainder of the cases (those regarding adultery, lasciviousness, and the variety of other crimes) were recorded less than five times each.<sup>152</sup>

**Table 1: Essex County Sexual Deviance Convictions**

Key: Female Convictions/Total Convictions

	1630s	1640s	1650s	1660s	1670s	1680s
Adultery	0/0	1/2	0/0	0/1	0/0	0/0
Bastardy	0/0	0/0	4/4	0/0	5/19	0/7
Fornication	0/0	4/5	12/23	16/24	35/51	23/25
Fornication*	0/0	2/2	12/12	15/15	69/69	17/17
Marriage	0/0	1/1	1/1	1/1	2/2	0/0
Lasciviousness	0/0	0/0	1/2	1/1	1/1	0/1
Uncleaness	1/1	2/2	5/6	4/6	3/6	0/0
Other	0/0	3/6	2/2	0/1	4/5	0/0

\*Fornication before marriage

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<sup>152</sup> *Records and Files of the Quarterly Courts of Essex County Massachusetts*. 6 vols., (Salem, MA: Essex Institute, 1975); See Table 1.

**Table 2: Essex County Solitary Female Convictions of Fornication**

Decade	Number of Cases	Percentage of Cases
1640s	3	75%
1650s	6	46.15%
1660s	11	68.75%
1670s	27	77.14%
1680s	18	78.26%

What is enlightening about the Essex County records is the insight they allow into prosecution rates for women accused of sexual deviance in Massachusetts. Women were charged in over half of the cases for nearly each decade for all crimes in question, except those of adultery and bastardy. Disregarding the fornication cases in which a married couple was charged together for a child prematurely born, women were presented in 69% of the fornication prosecutions with 75% of those cases concerning a woman either solely on her own or apart from the man who accompanied her.<sup>153</sup>

Women were charged in the majority of cases involving uncleanness and lasciviousness, as each crime saw women charged 60% of the time. However, as is clearly noticeable, this majority was extremely slight given that they were a mere 10% from an equal prosecution rate. For the other various sexual misdeeds, women constituted an equal share of proceedings at 50%. Therefore, women were only charged as a majority in fornication cases, where as they were prosecuted equally

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<sup>153</sup> *Records and Files*; See Table 2; The actual percentages are 68.75% and 74.72% respectively.

for the other sexual crimes, despite the slightly majority they constituted in the categories of uncleanness and lasciviousness.<sup>154</sup>

As mentioned previously, women were actually a significant minority in the proceedings of adultery and bastardy cases. Of the three adultery cases for the roughly fifty years in question, only one woman was charged. These three cases did not actually result in a punishment for the crime of adultery. The two not included in the statistic for female sex crimes were both charges against men for solicitation of adultery rather than the actual act and did not include a woman as an active participant, but rather as the victim. The one case specifically charging a woman seemed to be more of a domestic dispute rather than a sexually deviant act. The man and woman were presented upon “suspicion of adultery,” and the punishment did not target the two parties but rather the woman and her husband. They were required to submit themselves to the stocks for half an hour each for “fighting together.”<sup>155</sup>

Regarding bastardy cases, women only constituted 30% of charges. In 56% of those prosecutions, women were involved solely, the others were joint charges against both a man and a woman.<sup>156</sup> It would seem that the bastardy cases concerned the financial support of the child rather than the punishment of the woman for the specific crime of having a child out of wedlock. When a woman was prosecuted, she was charged similarly as those convicted of fornication. Three of the punishments handed out to single women were remarkably similar to punishments

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<sup>154</sup> *Records and Files*; See Table 2.

<sup>155</sup> *Records and Files*, 1: 158.

<sup>156</sup> See Table 2.



for fornication: whipping or fine.<sup>157</sup> One woman, a servant, got an extra three years added to her indenture or the monetary equivalent thereof for her having inconvenienced her master.<sup>158</sup> The last two cases simply presented a woman for the crime and did not specify either a decision or a punishment.<sup>159</sup> What is also important about these women is that all but one of them were in servitude of some form, whether that be slavery or indenture. Men accused of bastardy, on the other hand, generally received a specific punishment related to the financial support of the child, usually hovering around 2 shillings a week.<sup>160</sup> It would seem, therefore, that bastardy convictions were more relevant for men in order to save the town from the support of the child, whereas woman could be charged for fornication whether a child resulted or not.

From this examination, it is clear that if an unfair bias existed toward women in Massachusetts's legal proceedings, it most likely occurred in fornication cases. For the other sexual crimes, women constituted roughly half or even a minority of those presented (in the case of adultery and bastardy), whereas they made up a majority of those charged with fornication. Women were also prosecuted more frequently on their own than as part of a deviant couple. However in many instances magistrates only had the proof of the woman's pregnancy to determine her misdeed, whereas it was much more difficult to determine a man's crime unless he were

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<sup>157</sup> *Records and Files*, 1: 196, 243, 323.

<sup>158</sup> *Records and Files*, 5: 103.

<sup>159</sup> *Records and Files*, 6: 138, 7: 146-9.

<sup>160</sup> For example: *Records and Files*, 2: 33, 55, 5: 410, 411-13, 6: 338, 7: 410-11, 8: 12-13, 219, 288, *passim*.

named by the woman. However, it is significant that many of these men, when mentioned by women, were still not found as having been presented for bastardy.

Another trend noticed in the fornication cases concerns a lessening of the punishment of single men and an increase in the punishment for single women as the years progress. In the 1650s there was an effort to charge both men and women equally with the crime of fornication. However, beginning in the 1670s (and even to some degree the 1660s) a noticeable trend started to emerge. Apart from the anomaly of the 1640s (wherein solitary women made up three of the four cases presented), there was a steady increase from the 1650s at 46% to the 1680s at 78%.<sup>161</sup> This is perhaps the same as the trend seen in the bastardy statistics where men were charged far more frequently, due to the fact that they were charged for the economic maintenance of the child whereas the woman was often charged simply with fornication. However, if this were the case, one would expect to find a significantly larger number of male bastardy cases to match the scores of women being charged solitarily for fornication.

As can be clearly seen from Table I, there was a noticeable increase in the number of fornication statutes progressing from the 1640s to the 1680s (even though the numbers for the 1680s are less than that of the 1670s, the trend is still applicable given that the records stop at the year 1683).<sup>162</sup> This, like McManus's findings, corroborates much of what other historians have concluded about Massachusetts's prosecution of sexual misconduct. Goodbeer also discusses the tendency for common Massachusetts's citizens to have differing views on what

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<sup>161</sup> See Tables 1 and 2.

<sup>162</sup> See Table 1.

constituted illicit sex during the time. According to Goodbeer, couples that had committed themselves privately to marriage deemed engagement as the point of which sexual intimacy became legitimate.<sup>163</sup> He cites fornication proceedings against engaged couples as efforts of the magistrates to “de-legitimate and criminalize acts that ordinary folks often considered unexceptionable.”<sup>164</sup> Therefore, the increase in fornication cases could represent a changing of moral norms for the masses of Massachusetts that was not necessarily mirrored within official legal and governmental circles.

As a result, magistrates were constantly attempting to align the public’s understanding of morality with that of the officials. Within the cases of the Essex County court, one can see a number of instances in which the deviant submitted a plea or confession, which was promptly recorded, in order to receive a lesser sentence or the favor of the courts. For example, in 1668, William Reeves and Susana Durin were presented for fornication. He entered a petition stating his knowledge that the crime was “repugnant to ye law of god & man” and sought God to “ashame him as to make him haue a detestation agt [against] such & all other sins.”<sup>165</sup> Goodbeer confirms the usefulness of this tactic when he states that oftentimes it was understood that legal proceedings against sexual misconduct in Massachusetts simultaneously served a religious and social function. It allowed the individual to undergo intense self-examination in order to unearth his or her innate sin and thus prevent themselves from further shame and God’s increased

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<sup>163</sup> Godbeer, *Sexual Revolution*, 7.

<sup>164</sup> Godbeer, *Sexual Revolution*, 0.

<sup>165</sup> *Records and Files*, 4: 38-40.

displeasure.<sup>166</sup> Furthermore, prosecution served as a warning for other potential deviants, whereby a guilt-laden plea served as a lay sermon in a sense and thus discouraged others from similar activity.<sup>167</sup>

These efforts were complicated, however, with the coming of the eighteenth century. While the Essex County records do not extend into this decade, other historians have highlighted trends both legally and socially that are relevant for this discussion. One such trend was the steady decline of sexual prosecutions in the eighteenth century. The first appearance of this issue relates to the initial increase in sex crime prosecution as magistrates were attempting to keep pace with the high frequency of crime committed by new waves of colonists that did not necessarily share Puritan concepts of morality.<sup>168</sup> Historian William E. Nelson states that Massachusetts's "continued obsession with sexual offenses confused law with a particular moral code causing those who did not share that identical set of values to question the legitimacy of authority."<sup>169</sup> This increased diversity of morality coupled with another growing trend, increased attention to economic issues, ultimately resulted in a decrease in the prosecution rates for sexual misdeeds in general. During the eighteenth century, a shift occurred in the collective consciousness of the colonists of Massachusetts as they became more focused on worldly things than spiritual ones.<sup>170</sup>

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<sup>166</sup> Godbeer, *Sexual Revolution*, 88.

<sup>167</sup> Godbeer, *Sexual Revolution*, 35.

<sup>168</sup> Godbeer, *Sexual Revolution*, 34.

<sup>169</sup> William E. Nelson, *The Common Law in Colonial America: Volume I, the Chesapeake and New England, 1607-1660* (New York, Oxford University Press, 2008), 53.

<sup>170</sup> Godbeer, *Sexual Revolution*, 228; Nelson, *Common Law*, 49.

Accompanying both of these trends was a slackening of concern over premarital sex in general. Beginning around the 1750s sexual freedom began to substantially increase and it was not uncommon for parents to sanction premarital sex by condoning bundling and overnight visits, to both allow for increased intimacy between the hopeful couple as well as insurance in the responsibility of the father in the event that a pregnancy ensued.<sup>171</sup> Godbeer suggests that the role of sexual regulation began to move away from the public realm of the colonial court system to the more private sector of the family and community.

However, sexual deviance prosecutions persisted well into the eighteenth century, suggesting a stubbornness among magistrates to relinquish control over the sexual lives of the colonists.<sup>172</sup> Nelson reiterates this point, stating: “Massachusetts persisted in trying to regulate moral behavior, changing the particular emphasis to reflect new standards and behavior patterns.”<sup>173</sup> However, punishments did become lighter and prosecutions less frequent into the 1730s and 1740s.<sup>174</sup> Goodbeer states that as the decades went on there was an increasing shift to only prosecute individuals for fornication if an unwed birth occurred; again suggesting a shift toward a more financially-minded populous insistent that their towns not be burdened with the care of impoverished bastards.<sup>175</sup> Nelson notes that

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<sup>171</sup> Godbeer, *Sexual Revolution*, 229.

<sup>172</sup> Godbeer, *Sexual Revolution*, 229.

<sup>173</sup> Nelson, *Common Law*, 49.

<sup>174</sup> Godbeer, *Sexual Revolution*, 229-30; Nelson, *Common Law*, 49.

<sup>175</sup> Godbeer, *Sexual Revolution*, 230.

by the mid-eighteenth century, married couples were no longer being prosecuted for having early births even though it was evidence of premarital sex.<sup>176</sup>

By examining the similarities and differences between written and practiced law the degree to which the official opinion regarding sex crimes transferred to the every-day application of those laws and the interpretation of such laws by the communities themselves can be determined. Being that the Essex County records ended with the year 1683, only a portion of the laws discussed in the previous chapter will be applied to this examination.

The first chapter presented the most serious of all Massachusetts sex crimes first: that of adultery. As was discussed, the crime was a capital offense and carried with it the recommendation of the pains of death as an appropriate punishment, citing scriptural precedent. Although the law was updated to remove the death penalty (in favor of whipping or other shame-inducing punishments), that change did not occur until 1696 and thus does not apply to the available Essex County records. For the three cases included in these records, however, there were no official convictions of adultery despite the individuals having been charged with the crime. In fact, the only case in which a woman was punished saw the woman ordered to sit in the stocks for fighting with her husband. The other two cases regarded men making unwanted adulterous advances toward women of the town, with one man being ordered to sit in the stocks and the other to be whipped or fined 30£.<sup>177</sup>

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<sup>176</sup> Nelson, *Common Law*, 49.

<sup>177</sup> *Records and Files*, 1: 158-9, 3: 47-8.

Thus, one can see that there was reluctance among Massachusetts's magistrates to charge individuals with the crime of adultery. Whether this tendency arose out of a genuine effort to uncover the truth or from a hesitancy to sentence individuals to the death penalty is much more difficult to determine. The evidence does, however, corroborate what many other historians have previously noted regarding the tendency for Massachusetts courts to charged offenders with a lesser crime if the circumstances allowed, thus demonstrating a marked leniency that some have found surprising given the colony's unyielding official stance on the issues.

For fornication, the punishments matched much more closely that which was dictated by the written statutes. The first fornication law recommended corporal punishment, fines, or the entering into marriage as appropriate punishments for the crime. The 1665 revision would also apply although it did not change the suggested punishments but rather just confirmed the legitimacy of the first law.<sup>178</sup> The portion of fornication convictions regarding married couples with premarital pregnancies followed precisely the corporal punishment or fine requirements. Of the 102 cases that actually resulted in a punishment, 47 were ordered to choose whether they be whipped or fined, 47 were ordered to just pay a fine, and 4 were ordered to be whipped. When the fine to be paid was specified the amount ranged from 20 shillings to 8£ with the amount proceeding on a relatively steady incline for the

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<sup>178</sup> Cushing, *Law and Liberties*, 29, 103, 178.

entirety of the period. When the lashes for the whippings were specified they ranged from 5 stripes to 20, again, growing steadily as the decades progressed.<sup>179</sup>

There are a couple of other points that are interesting to note regarding these punishments for married fornicators. For one, there were at least six instances in which there were different punishments dictated for the man and the woman being charged. Oftentimes the man would receive more lashes or a higher fine than the woman. The first occurred in 1663 where William Deale was sentenced to ten stripes while his wife Mary was only sentenced to 5.<sup>180</sup> A case presented in 1674 even provided both alternate whipping and fine requirements for the man and woman. Thomas Frame was sentenced to either 15 stripes or a 4£ fine, whereas his wife Mary was sentenced to either 10 stripes or the payment of 40 shillings.<sup>181</sup> This may simply be due to Puritan concepts of women as weaker in body and also as being dependent upon their husband for their financial support. Another interesting observation is that, starting in the later half of the 1770s, the convictions began to more and more require simply a fine to be paid for the crime, albeit the amount of that fine did tend to increase when specified as mentioned before.<sup>182</sup>

For the cases charging unmarried women of fornication, many followed again the same punishments of whippings or fines. Of the 92 cases, 40 (43%) required simply a whipping or fine, 2 (2%) required both, 17 (18%) recommended just a fine, and 28 (30%) suggested the person just be whipped. Thus, one can already see that there was a greater tendency for unmarried women to be ordered to be whipped

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<sup>179</sup> *Records and Files*.

<sup>180</sup> *Records and Files*, 3:61.

<sup>181</sup> *Records and Files*, 5:297.

<sup>182</sup> See *Records and Files*, Vols, 7 and 8.



than those that were married at the time of their prosecution. The fines included 20, 40, and 50 shillings or 3, 4, 5, and 6£. Whippings ranged from 10 to 30 lashes. Only one of the cases, having been presented in September of 1680, included the option to marry for John Ring and Martha Lampson in order to reduce their fine.<sup>183</sup> There were no instances of cases forcing the two parties into marriage, which was in direct opposition to the language of the law.

Regarding bastardy cases, the only law mentioning bastardy during this time period occurred in 1668 and largely excluded women due to its focus on the insurance of child support from the father of the child.<sup>184</sup> As mentioned before, the punishments were similar to those of women simply being charged with fornication, as the bastardy cases mostly charged the man and ensured a certain amount of financial support for the child. Of these cases, two women were fined as part of a married couple, one was given three extra years toward her indenture or the payment of 6£, two were fined (20s and 40s respectively), and the remained were sentenced to either be whipped or fined either 20s or 40s.<sup>185</sup>

The cases involving improper marriage or cohabitation were clearly in violation of the Massachusetts statutes concerning proper marriage requirements. The applicable marriage laws for this time did not include specified punishments

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<sup>183</sup> *Records and Files*, 8: 15.

<sup>184</sup> Cushing, *Laws and Liberties*, 205; *The Acts and Resolves, Public and Private, of the Province of the Massachusetts Bay*. Vol. 1. Boston: Wright and Potter, 1869. "Acts 1692-1714." Massachusetts Acts and Resolves 1692 to 1959. *Mass.Gov*. N.d. <http://www.mass.gov/anf/research-and-tech/gov-data-and-docs/state-docs-and-resources/state-docs-online/ma-acts-and-resolves/massachusetts-acts-and-resolves-1692-to-1959.html>, 52.

<sup>185</sup> *Records and Files*, 1: 196, 243, 323, 2: 50, 5: 103, 6: 23.

however.<sup>186</sup> Thus, the punishments for the women accused of these crimes tended to fall along the whipping or fining punishments popular in the other crimes. One married couple was fined in 1648 for marriage without being published, while another couple was bound to good behavior for their “disorderly living.”<sup>187</sup> A third woman was whipped for living apart from her husband.<sup>188</sup> The rest were either presented for future sentencing or the punishment was not specified.

The other miscellaneous cases do not correspond to a specific law and thus have no precedent with which to compare them. Regarding members of the opposite sex engaging in too much familiarity, one couple was fined and ordered to not be in each other’s company under threat of an additional fine of 20s for each offense.<sup>189</sup> Another one was sentenced to one month in prison, a bond of 30li to not appear in the accompanying man’s presence, and the wearing of a sign reading: “FOR MY BAUDISH CARRIAGE.” This was by far the most severe sentence seen among nearly all sex crime cases. The reasoning, perhaps, lies in the language of the record. The text presented “Sarah Row, for unlawful familiarity with John Leigh, and abusing her husband.”<sup>190</sup> Thus, not only had the woman tarnished her own reputation by her illicit carriages with a man to whom she wasn’t married, she had the added shame of having already been married and thus having disrespected her husband and the marriage covenant.

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<sup>186</sup> John D. Cushing, *Massachusetts Province Laws, 1692-1699* (Wilmington: Michael Glazier, 1978), 94-5.

<sup>187</sup> *Records and Files*, 2: 143, 3: 218.

<sup>188</sup> *Records and Files*, 4: 238.

<sup>189</sup> *Records and Files*, 4: 274.

<sup>190</sup> *Records and Files*, 5:147.

Regarding crimes of lascivious nature, one woman was discharged, one admonished, and one ordered to undergo the humiliation of wearing of a sign on lecture day as well as the pain and embarrassment of a whipping.<sup>191</sup> The woman, Hanah Gray, was ordered to wear a sign reading, "I STAND HEERE FOR MY LACIVIOUS & WANTON CARIAGES" for her inappropriate acts and language among the children of the town and her general unruly behavior.<sup>192</sup> Crimes of uncleanness followed most closely the punishments of fornication, often including fines and whippings of the same degree of severity as those inspired by fornication convictions. For the remainder of the miscellaneous crimes, one woman was warned for immodesty, another fined 10s for wanton dalliance, another whipped for filthiness, another admonished for unseemly behavior, and a final whipped for uncivil carriages.<sup>193</sup> The light punishments or lack there of regarding these crimes seems to suggest that they were simply a means to prevent a further increase of sexual deviance that might arise from such suspicious carriages between the sexes.

While many of the punishments for these miscellaneous crimes followed the same tendencies of crimes such as fornication, there is one noticeable difference. It seems that the use of severe shaming tactics such as stocks and the wearing of signs were reserved explicitly for those crimes for which there was no written precedent for punishment. This is an excellent example of popular opinion being interjected into cases where the magistrates were, in a sense, left to their own judgments. Thus, they took it upon themselves to sentence these deviant women for crimes that

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<sup>191</sup> *Records and Files*, 1:388, 3:111, 5: 291.

<sup>192</sup> *Records and Files*, 291.

<sup>193</sup> *Records and Files*, 1:73, 60, 200, 286, 5: 239.

would be both humiliating and painful, belying their underlying opinions regarding female sexual deviance.

## **Rhode Island**

While the governmental and legal records of Massachusetts have been remarkably preserved, the colony of Rhode Island presents a more problematic situation. Rhode Island records are not as complete, organized, or available to allow for much statistical analysis. Furthermore, due to the dearth of sources, very few legal histories have been completed on colonial Rhode Island. However, there is much that can be gathered from the sources that are available in terms of type and severity of punishment and some statistical evidence.

The available records most relied on include a compilation of government records collected by John Russell Bartlett, as well as a two volume collection of records of the Rhode Island Court of Trials for the years 1647-1662. In these two sources, twenty-seven total cases regarded sexual misconduct. Of those twenty-seven, sixteen (59%) regard fornication, seven (26%) for adultery, one (4%) for bastardy, and three (11%) for miscellaneous crimes including unlawful marriage, living contrary to the law, and another unidentifiable crime. Of these individual crimes women were charged in 81% of fornication cases, 57% of adultery cases, 100% of bastardy cases, and 7% of other miscellaneous cases.<sup>194</sup>

Rhode Island adultery cases are significant in that there are a noticeably larger number of them than that of Massachusetts especially when one considers

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<sup>194</sup> *Records of the Court of Trials of the Colony of Providence Plantations 1647-1662*, 2 vols. (Providence: Rhode Island Historical Society, 1920).

the relative size of the two colonies' populations. This is likely due to the lax nature of the original Rhode Island adultery law requiring only corporal punishment or fines of the offender. In most of these cases, the offenders were only charged with fines or whippings as the circumstances required. One case requires a closer look however. In September of 1660, James Woodward and Mary Hicke were presented for adultery in that they were living contrary to the law. However, the records took care to note that the law specifically required the testimony of two witnesses, and in this particular case there was only one witness and an underage one at that. Thus the court was willing to dismiss the offense due to lack of evidence, but the couple freely confessed.<sup>195</sup>

Most of the Rhode Island fornication cases were equally uniform, most offenders simply receiving a sentence of fifteen stripes or forty shillings in fines. However, the courts allowed for leniency in the event that the couple could prove that they had intended to marry and would presently do so. Edward Richmond and Abigail Davis, were presented for fornication and living contrary to the law. They were both sentenced to be whipped or to pay the forty-shilling fine and both paid the fine. The couple asked the court to request permission to marry so as to not fall temptation to the same offense a second time. They stated that they had been published twice as the law required by that they were delayed by a certain individual by the name of Obadyah Holmes though he had no reason to do such. The court granted their request and in a way absolved their crime.<sup>196</sup> While that couple was not able to get their sentence diminished, the second couple was able to get a

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<sup>195</sup> *Records of the Court of Trials*, 1: 77.

<sup>196</sup> *Records of the Court of Trials*, 1: 45-6.

delay upon their sentence due to the evidence proving that they had intended to marry but were hindered. John Samson and Johanah Folgiour were presented for fornication in October of 1664 but cited hindrance by her mother upon their trial. The court then set about to collect evidence in the affirmative and thus postponed the sentence.<sup>197</sup>

Distinctly different from Massachusetts were Rhode Island's bastardy convictions. There was only one confirmed bastardy presentment for this time period with Mary Paul having been examined and confessed that she had become pregnant by Richard Canterbury before marriage. However, even this case was not a typical trial of bastardy in that it simply stated that the girl was presented on the grounds of suspicion of bastardy and was bound to appear at the next General Court of Trials to be formally charged with fornication.<sup>198</sup> This was a drastically different set of legal circumstances than that which can be seen in Massachusetts. Firstly, there was only one confirmed case, that case not even resulting in a conviction of bastardy whereas Massachusetts had upwards of thirty explicitly bastardy cases. Furthermore, the person presented was female, whereas most persons charged with bastardy in Massachusetts were male.

It would seem that Rhode Island was not as concerned as Massachusetts in making distinctions between illicit sex that resulted in pregnancy and that which did not. The girl was presented due to the condition of being pregnant, but it was merely to confirm that she was with child and therefore had committed sex outside of the confines of marriage. Thus, she would ultimately be tried for fornication. One can

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<sup>197</sup> *Records of the Court of Trials*, 2: 36.

<sup>198</sup> *Records of the Court of Trials*, 1: 46.

assume that the lack of a bastardy statute in the original Rhode Island law codes as well as these brief court records demonstrates that magistrates in Rhode Island used the fornication law as a sort of umbrella statute to prosecute individuals of a variety of illicit sexual acts that did not hinge on the existence of an illegitimate child. Furthermore, it can be assumed that Rhode Island had in place some other means of ensuring the support of the child whether that was through communal support or the settlement of paternal financial support outside of court, being that there were no cases specifically sentencing a child support payment.

The other three miscellaneous cases mostly concerned the proper marriage practices in the colony. The first presented William Long and Ann Brownell for unlawful marriage, however they were simply charged with the forty shillings fine and fees of court, which was the same punishment that most fornication convictions were charged with.<sup>199</sup> The second case charged Robert Spink with living contrary to the law with a married women, Ann Brooman. The man was absolved however and only paid his court fees.<sup>200</sup> The final miscellaneous case is unidentifiable in terms of the crime having been committed.

In order to determine the colony's understanding of sexual misconduct, its court cases must be compared with its laws to see the degree to which they conformed or deviated from the initial law code. Regarding adultery, the first statute did not mention any punishment, but the second revision from 1655 required a whipping of 15 lashes in one town followed by 15 in another along with a 10£ fine. As Chapter 1 discusses, for a second offense the deviant must suffer 15 lashes at

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<sup>199</sup> *Records of the Court of Trials*, 2: 48.

<sup>200</sup> *Records of the Court of Trials*, 2: 50.

each of the colony's four towns and pay a fine of 20li.<sup>201</sup> The first adultery case (that was mentioned earlier) was James Woodward and Mary Hicke, being presented before the court in 1660. The crucial point about this case is that the courts acknowledged that there was only one witness and were willing to cast off the case as the law required two witnesses for it to be heard. As such, the punishments for this case are slightly off. The only punishment noted was for the man who must only pay 40s and post a 10£ bond.<sup>202</sup>

In a second case, a woman by the name of Hannah Foster was charged solitarily with fornication and adultery and sentenced to 15 stripes or 40s. However, she only suffered the fifteen stripes in one town and the fine was clearly less than the official suggestion of 10£.<sup>203</sup> A third case presented Margret Collwell, who confessed to the crime of adultery and thus received only half of the punishment and fine, ultimately being sentenced to one whipping of 15 stripes and a fine of 5£.<sup>204</sup> The final example presented the adultery case of William Temberlake and Mary Stockes, who were both charged with the official sentence of 15 lashes at two different towns and a fine of 10£. However, Mary was later given the option to forgo her second whipping in exchange for a 5£ fee.<sup>205</sup> Thus, from these women's cases one can begin to see that Rhode Island, as did Massachusetts, erred on the side

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<sup>201</sup> John D. Cushing, ed., *The Earliest Acts and Laws of the Colony of Rhode Island and Providence Plantations, 1647-1719* (Wilmington: Michael Glazier, 1977), 27-30, 65; John Russell Bartlett, *Records of the Colony and State of Rhode Island and Providence Plantations* (Boston: New England Historic Genealogical Society, 2003), CD.

<sup>202</sup> *Records of the Court of Trials*, 1:77.

<sup>203</sup> *Records of the Court of Trials*, 2:71.

<sup>204</sup> *Records of the Court of Trials*, 2:82.

<sup>205</sup> *Records of the Court of Trials*, 2:85-6.



of caution in regards to the punishment of adultery crimes. However, they conformed more to the original law and at least judged the offender with the appropriate crime, probably due to the lax nature of the original text, whereas Massachusetts's magistrates charged the individual with an entirely different crime if they gave a lesser sentence.

Regarding fornication cases, all of them adhered exactly to the law as stated in the 1657 version requiring offenders to receive either 15 lashes or, more commonly, a fine of 40s.<sup>206</sup> Furthermore, there was one case in which a woman was convicted for the second time of fornication, she was convicted and ordered to be whipped twice as the law stated and to pay a fine of 4£ plus costs of court.<sup>207</sup> This, again, was precisely in line with the original statute. Only one of the cases did not result in the appropriate punishment, the case referred to earlier of John Samson and Johanah Folgiour, who had provided sufficient evidence that they had intended to marry.<sup>208</sup> However they were not required to carry out the marriage as was the couple presented in a similar manner earlier in the record in 1658.<sup>209</sup> There was no bastardy law on the record for the colony of Rhode Island, thus when bastardy cases appeared, the offenders were most often charged along the same line of fornication sentences. The one case that appeared with a clear sentence and punishment simply required the woman to present a 4£ bond and to appear at the next court, upon

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<sup>206</sup> Bartlett, *Records of the Colony and State of Rhode Island*; Cushing, *Earliest Acts*, 143.

<sup>207</sup> *Records of the Court of Trials*, 2:65-66.

<sup>208</sup> *Records of the Court of Trials*, 2:36.

<sup>209</sup> *Records of the Court of Trials*, 1:45.

which she was again mentioned in the record as being charged with fornication and sentenced to the typical whipping or a 40s fine.<sup>210</sup>

The only other applicable law regarded the proper methods of declaring intent to marry. The law simply required publishment of intent in two meetings, confirmation by town officials, and documentation of such. The penalty was only a fee of 5£ paid by the offending man to the parents of the woman and to each town. When these cases appeared in the record, however, the one couple found guilty was simply charged a 40s fine as with fornication cases and were admonished against living together without being properly married first.<sup>211</sup>

## **Pennsylvania**

Pennsylvania's court records are much more complete than those of Rhode Island. This section will draw mostly from two separate sources. The first, Jack D. Marietta's *Troubled Experiment: Crime and Justice in Pennsylvania, 1682-1800* provides statistics colony-wide for the period under analysis and were used in the same way that McManus's findings were regarding Massachusetts. The other source is the *Records of the Court of Quarter Sessions and Common Pleas of Bucks County Pennsylvania, 1684-1700*. Marietta's findings were compared to the cases from Bucks County, Pennsylvania in order to determine larger trends throughout the colony and the ways that they were similar or different from the colony's original laws, as well as the laws and prosecution trends of the other two colonies.

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<sup>210</sup> *Records of the Court of Trials*, 1:46, 50.

<sup>211</sup> *Records of the Court of Trials*, 2:50.

Marietta included the crimes of fornication, bastardy, adultery, bigamy, buggery, sodomy, and incest for each decade in his study. Unlike Massachusetts and Rhode Island, which both had fornication as the most common sexual offense, the most common offense in the colony of Pennsylvania was that of bastardy. In fact, bastardy prosecutions exceeded the next most common (fornication) by over 200 cases, finally resting at a total of 408 cases from 1680 to 1759. As already mentioned, fornication was next in frequency with a total of 193 cases followed by adultery with 56. The remainder of the crimes (bigamy, buggery, sodomy, and incest) did not exceed six cases for the entire eight-decade period with buggery being most frequent with six prosecutions.<sup>212</sup>

Another trend that can be noticed from McManus's table is a steady rise in prosecution rates from the 1680s to the end of the 1740s (albeit with a slight dip for all crimes from 1700-1710), followed by a drastic increase for the crimes of fornication, bastardy, and adultery in the 1740s and, for fornication, the 1750s. Fornication increased from 29 cases in the 1730s to 47 cases in the 1740s for a percent increase of 62%. This was followed by a percent increase of 77% for the 1750s as the number of cases grew to 83. Bastardy rose from 49 cases in the 1730s to 119 in the 1740s and then 141 in the 1750s for percent increases of 143% and 18% respectively. Adultery rose from two cases in the 1730s to nineteen in the 1740s and twenty-one in the 1750s with percent increases of 850% for the first and 11% in the second. Thus while fornication cases continued to grow exponentially for

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<sup>212</sup> Jack D. Marietta, *Troubled Experiment: Crime and Justice in Pennsylvania, 1682-1800* (Philadelphia: University of Pennsylvania Press, 2006), 41.

the last two decades in question, bastardy and adultery witnessed drastic increases for the decade of the 1740s before leveling off again during the 1750s.<sup>213</sup>

Marietta states that charges related to immorality constituted 9% of all prosecutions in Pennsylvania from 1682 to 1800; a number which he compares with a variety of other contemporary colonial courts.<sup>214</sup> While he cites a number of different colonies in the course of his argument, his findings regarding Massachusetts are clearly the most enlightening for this study. Marietta notes that from 1630-1645, illicit sex and drunkenness were the two most commonly prosecuted crimes tried by the Massachusetts Court of Assistance. Furthermore, he cites historian William Nelson, whose research found that even in the later half of the eighteenth century, sexual immorality cases constituted a solid 38% of all prosecutions.<sup>215</sup>

Marietta goes on to locate Pennsylvania along the perimeters of what he terms “moralistic communities” which were like to include among prosecutions certain “victimless crimes,” such as sexual deviance and other crimes regarding proper behaviors. He explains: “The most zealously moralistic communities prohibit these and other victimless behaviors- usually because they believe that the behaviors in question violate divine prohibition.”<sup>216</sup> Marietta argues that Quaker Pennsylvania was only slightly connected to this group in that the prosecution rates for these types of crimes were so slight. Furthermore, many of the sexual misconduct convictions can be traced to more close-knit, largely Quaker

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<sup>213</sup> Marietta, *Troubled Experiment*, 41.

<sup>214</sup> Marietta, *Troubled Experiment*, 39.

<sup>215</sup> Marietta, *Troubled Experiment*, 39-40.

<sup>216</sup> Marietta, *Troubled Experiment*, 40.

communities in which neighbors were more likely to root out and report upon each other's private misdeeds.<sup>217</sup>

Marietta also cites a significant decline in Quaker moral influence on the Pennsylvanian legal system beginning in the 1710s. After this time, many of the varieties of morality prosecutions died out with the exception of bastardy convictions, which were not entirely religiously motivated. His reasoning behind this is the shift from a Quaker political majority to a distinct minority within the community beginning around the same time. As a result of this shift, Quakers could no longer expect to exert their moral standards upon a population that did not adhere to the same faith.<sup>218</sup>

When grappling with the issue mentioned previously of the increased number of sex crime cases around the 1740s Marietta refers to this theme of diversity and the implausibility of an agreed upon moral standard. He includes a chart demonstrating both totals of moral crimes per year as well as statistics for the percentages that those morality crimes made up of the total amount of crimes tried annually. His graph demonstrates that just before the year 1740 both total moral crimes and the percentage of moral crimes increased significantly. However, after around the year 1750 the percentage of morality crimes decreased steadily for the remainder of the period despite the fact that the actual number of cases appeared to increase. This can simply be attributed to population growth and increased crime rates in general.<sup>219</sup>

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<sup>217</sup> Marietta, *Troubled Experiment*, 41-2.

<sup>218</sup> Marietta, *Troubled Experiment*, 42.

<sup>219</sup> Marietta, *Troubled Experiment*, 80-1.

However, the years surrounding the 1740s must still be accounted for. Marietta notes that during that time, the increase in cases was largely due to adultery, bastardy, and fornication charges. He acknowledges this trend by noting, "After 1710, almost all other varieties of moral crimes disappeared from the courts, but sexual crimes grew."<sup>220</sup> However, he is doubtful as to whether or not sex crimes were a signpost for moral zeal within Quaker Pennsylvania. According to Marietta, it is illogical to assume that sex crimes were not connected to religious zeal in the Bay Colony because the language of the law codes explicitly established their scriptural precedent and religious convictions. He also cites the fact that Massachusetts's courts prosecuted men and women for bastardy even if the couple married before the child's birth, not as a means of ensuring the financial protection of the town (since the child clearly had a supportive family unit), but because the act was an offense against God and thus needed to be punished.<sup>221</sup>

In arguing against the religious precedent behind Pennsylvania's increased sexual deviance prosecutions, Marietta points to the fact that Pennsylvania never prosecuted married couples for premarital fornication or bastardy. Furthermore, the only women charged with fornication were those who had become pregnant outside of the confines of marriage. Of these cases, Marietta notes that individuals were either charged with fornication or fornication and bastardy. In regards to the singular fornication charge, Marietta suggests that the father might have settled for support of the child outside of court and thus no prosecution of bastardy need take

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<sup>220</sup> Marietta, *Troubled Experiment*, 82.

<sup>221</sup> Marietta, *Troubled Experiment*, 82.

place.<sup>222</sup> However, he suggests that the decision to only prosecute the woman in such cases may have represented a “very gender-biased way” for magistrates to discourage others from engaging in illicit sex and potential bastardy and thus avoid more prosecutions in the future.<sup>223</sup> If their motivation had been purely zealous, Marietta argues, men who had been named as the father in these cases would have been prosecuted as well on the grounds of religious principle. For the charge of fornication and bastardy, the courts were most likely dealing with a reluctant father unwilling to provide child support and therefore a threat to the economic welfare of the community which must be eliminated.<sup>224</sup>

Marietta also points to the evidence of punishments within the records as decrying the argument of sex crimes as strictly responses centered upon religious zeal. Of the 287 Chester County convictions for bastardy and fornication, Marietta cites 76% as resulting in the payment of a fine and 15% as whipping. He notes the double effect of whipping regarding physical pain as well as public humiliation, suggesting it as a useful method for morally leaning-legal systems. Of this 15% of whippings, Marietta states that 39% occurred during the first four decades of the colony when (as he mentioned before) Quakers constituted the majority of the population and thus made more of an effort to impose their moral standards upon the masses. After 1718, whipping sentences went into a steady decline, fully disappearing by 1751 along with, according to Marietta, the popular belief that

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<sup>222</sup> Marietta, *Troubled Experiment*, 83.

<sup>223</sup> Marietta, *Troubled Experiment*, 84.

<sup>224</sup> Marietta, *Troubled Experiment*, 84.

fornication was an action which required humiliation of its participants and the scorn of the community.<sup>225</sup>

Marietta then examined the prosecution rates of adultery to determine if the gender bias that existed elsewhere in colonies (such as Massachusetts) also had a presence in Quaker Pennsylvania. What Marietta found was that women were actually prosecuted less frequently than men for adultery in Pennsylvania; a trend that is the direct opposite of that of Massachusetts. Furthermore, men and women pleaded guilty and were found guilty at roughly the same rates. Thus, he concludes that the bias present in colonies such as Massachusetts was simply non-existent in Pennsylvania.<sup>226</sup>

While the Bucks County records only have a handful of examples of sexual deviance cases regarding women, they still provide some insight into the larger trends that Marietta has proposed as well as others that he did not touch on, such as female prosecution rates, different types of punishments, and the process of court proceedings against sexual deviants. First, while there were only eight identifiable sex cases within the records, six of those eight concerned the crime of bastardy with at least two being repeat cases referring to the same couple. This quite clearly confirms Marietta's representation of bastardy as being overwhelmingly the most frequent sexual crime prosecuted by colonial Pennsylvanian courts. The other two crimes were for sexual assault and adultery and both cases involved male offenders. Four of the bastardy convictions concerned female offenders with two exhibiting a

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<sup>225</sup> Marietta, *Troubled Experiment*, 85-6.

<sup>226</sup> Marietta, *Troubled Experiment*, 87-8



sole female offender and two as a joint prosecution of both a male and a female individual.<sup>227</sup>

The first bastardy case in Bucks County was presented in April of 1685 and featured a woman named Katherine Knight for the birth of her illegitimate child upon which she named Charles Thomas as the father. The man confirmed the charge and was ordered to be whipped twenty lashes, to enter into marriage with Knight, and to compensate his master for the inconvenience and loss of time. Knight was also ordered to be whipped, but only with ten lashes. Thomas received a further sentence of five shillings in fines or five days in prison for swearing and behaving rudely towards the court.<sup>228</sup>

The next two presentments were incomplete. The second allusion to bastardy was merely a notation of an examination performed by a midwife upon a Mary Skeane, which can be assumed to have resulted in the confirmation of her pregnancy given her reappearance in the records at a later date.<sup>229</sup> The text for the third case is partially missing, but from what remains one can discern that the issue regarded bastardy, given that the record mentioned a woman having been gotten “with Child.”<sup>230</sup> One can also discern that there was no punishment issued at the time of presentment, but that the man, a Thomas Lacy, was bound to appear at the next court sessions.<sup>231</sup>

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<sup>227</sup> *Records of the Courts of Quarter Sessions and Commons Pleas of Bucks County Pennsylvania, 1684-1700* (Meadville, PA: Tribune Publishing Company, 1943).

<sup>228</sup> *Records of the Courts of Quarter Sessions*, 21.

<sup>229</sup> *Records of the Courts of Quarter Sessions*, 84.

<sup>230</sup> *Records of the Courts of Quarter Sessions*, 178-9.

<sup>231</sup> *Records of the Courts of Quarter Sessions*, 178-9.

In the fourth instance, Mary Skeane was presented once more for bastardy in January of 1693. Answering for her accusation regarding bastardy, Skeane named Walter Pomferet as the father and further claimed that she had not consented to the act. The record ended after presenting the evidence from the same wife mentioned before, and there was no mention of any specific punishment, or any mention of an attempt to call the alleged father and assailant to appear before the court.<sup>232</sup> The fifth case presented Thomas Lacy again, he having been charged before with getting Mary Roles pregnant. This record seems to be a repetition of the earlier records that, while incomplete, share many of the same phrases with this second case. The evidence presented by Roles stated that she and Lacy had been intimate several times, the text being very specific about several of the encounters. One instance was said to have happened on the day that a local man had died, and another was said to have occurred roughly thirteen or fourteen weeks before the trial. Again, however, no verdict was issued and no punishment ordered other than the responsibility of Lacy for a bond of 5£ to appear at the next court. The following trial was not included in the same volume of records.<sup>233</sup>

The final case again regarded the joint prosecution of the two individuals charged with creating the child in April of 1695. The woman, Mary Scaise, was presented first for the physical evidence of having been lately born of a bastard child. She named the father as a James Heaton and was ordered to pay a fine of 3£ for the crime of fornication. However, upon a plea from her father the girl's fine was absolved. Several months later, Heaton was presented for his having fathered

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<sup>232</sup> *Records of the Courts of Quarter Sessions*, 183.

<sup>233</sup> *Records of the Courts of Quarter Sessions*, 178-9, 275.

Scaise's child. The jury found the man guilty and he was ordered to pay the same fine of 3£ as well as court fees.<sup>234</sup>

While the records are incomplete, there are a few points that can be made concerning these cases. Firstly, one can see that in the space of ten years, the punishments for bastardy became significantly less severe. In the first case, the man was sentenced to twenty lashes and the woman to ten; a punishment that was both painful and a shaming mechanism. Furthermore, they were required to enter into marriage for their crime, which demonstrates not only the sheer influence of the court system but also their belief that intervention into the private lives of colonists was both necessary and acceptable. These punishments were entirely stricken from the last bastardy case. In the 1695 case of Scaise and Heaton, both parties merely paid a 3£ fine, and the woman was even released of her responsibility to pay. Notably, there is no mention of a marriage requirement.

Thus, from this handful of cases one can see that bastardy was indeed the most commonly prosecuted sexual offense in Pennsylvania and also that punishments for the crime became less severe over time. We can also see from these cases that magistrates were often willing to take the word of the woman in terms of blame for the father, regardless of whether or not the father was then charged for the crime. One reasoning behind this could be that Pennsylvania legal norms dictated that matters of illegitimate child support should be settled outside of court, the man only being prosecuted in the event that he refused to come to an agreement. Perhaps in cases like Skeane's, in which she was merely presented for

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<sup>234</sup> *Records of the Courts of Quarter Sessions*, 289-92.

the act and given the opportunity to name the father, was more of a ploy to make public the identity of the father and thus make it less likely that he should attempt to escape financial and social responsibility.

While largely referring to eighteenth century trends, historian Clare Lyons in her book *Sex Among the Rabble: An Intimate History of Gender and Power in the Age of Revolution, Philadelphia, 1730-1830*, explores in her second chapter entitled “The Fruits of Nonmarital Unions” the social tradition in Philadelphia of paternal financial responsibility for illegitimate children. She states that “women who engaged in nonmarital sexual activity could expect a minimum level of support for a child born out of wedlock without facing harsh, punitive sanctions themselves.”<sup>235</sup> Thus in cases like Skeane’s, a woman could be presented for having birthed a bastard child and yet not face any retribution.

Lyons goes on to state that the social environment of late colonial and early revolutionary Pennsylvania created a more just environment that lacked the severity of social control imposed on colonists in other colonies. such as Massachusetts. She states: “The broad range of customary practices in family formation, coupled with the Quaker adherence to freedom of conscious and continuing immigration from abroad impeded the formation of one uniform moral code.”<sup>236</sup> Thus, she specifically cites Quaker tolerance and the subsequent cosmopolitan demographics of Pennsylvania as directly related to prosecution rates and institutional intrusion upon private matters. Unlike Massachusetts,

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<sup>235</sup> Clare A. Lyons, *Sex Among the Rabble: An Intimate History of Gender and Power in the Age of Revolution, Philadelphia, 1730-1830* (Chapel Hill: University of North Carolina Press, 2006), 60.

<sup>236</sup> Lyons, *Sex Among the Rabble*, 72.

Pennsylvania was much more religiously diverse. Thus, Quaker principles were not forced on all colonists as were Puritan moral standards in Massachusetts, thus resulting in entirely different approaches to the issue of sexual deviance. According to Lyons, “nonmarital sexual behavior was rarely punished and that women enjoyed some protection from shouldering the burden of sexual intimacy alone.”<sup>237</sup> This was strikingly different from many of the Massachusetts cases of sexual deviance in which women were frequently prosecuted for sexual misdeeds by themselves.

Like later decades of colonial Massachusetts’s legal action, however, Pennsylvania courts became increasingly more concerned with financial and economic matters rather than moral concerns. The colony dictated that overseers of the poor were to sort out financial support for impoverished bastard children in order to protect the rest of the town from the cost of their upkeep.<sup>238</sup> As a result, during the later half of the eighteenth century, courts no longer punished individuals for crimes of fornication or bastardy.<sup>239</sup> Furthermore, after ensuring child support, the courts did not punish the mothers of bastard children separately as Massachusetts did.<sup>240</sup> Thus, Lyons argues that Quaker Pennsylvania kept church and state distinctly separate, relegating the regulation of sexual misdeeds to the responsibility of ecclesiastical authorities rather than the legal system.<sup>241</sup>

In terms of consistency, the only laws that would be applicable for the sexual deviance cases regarding women were those concerning bastardy. The original law

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<sup>237</sup> Lyons, *Sex Among the Rabble*, 77.

<sup>238</sup> Lyons, *Sex Among the Rabble*, 76.

<sup>239</sup> Lyons, *Sex Among the Rabble*, 80.

<sup>240</sup> Lyons, *Sex Among the Rabble*, 81.

<sup>241</sup> Lyons, *Sex Among the Rabble*, 83.

did not mention much in the way of punishments and merely stated that the physical evidence of the woman's pregnancy, along with her accusation during labor, would be enough to convict both her and the man of the crime of fornication, rather than bastardy.<sup>242</sup> However, this seems to be in line with most of the cases included in the small Bucks County record. In the two cases in which a punishment was clear, the first woman received a 10 lash sentence while the second was ordered to pay a fee of 3£. However, these punishments are not even as severe as the official punishments set about for fornication, being 21 lashes or a 10£ fee. It would seem therefore, since over half of the cases in which a woman was presented for adultery did not result in any stated punishment, that the real reason behind the proceedings was to publicly identify the father and pressure him into the maintenance of the child.

## **Analysis**

A number of larger conclusions can be drawn from these three comparisons. It appears that the three colonies were more lenient in their application of the laws than their respective statutes would suggest. It has been noted that Massachusetts was reluctant to prosecute offenders of adultery due to the severity of the initial sentence, instead preferring to prosecute deviants for lesser crimes such as fornication, which in turn had an impact on the sheer number of fornication cases. Furthermore, they did not prosecute women with more severity if their sexual

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<sup>242</sup> John D. Cushing, *The Earliest Printed Laws of Pennsylvania, 1681-1713* (Wilmington: Michael Glazier, 1978), 41-43.

misconduct resulted in an unwed pregnancy. They simply charged men with the maintenance of the child and either both or just the woman with fornication.

Rhode Island often allowed a lesser sentence, especially for cases of adultery, despite the fact that their adultery statutes were significantly more lenient than those in Massachusetts. Rhode Island magistrates were willing to take into account the possibility that the couple intended to marry and allowed for a margin of error especially if the evidence suggested that they had been prevented from doing so against their own will. Also, Rhode Island did not demonstrate the severe vacillation of punishment that Massachusetts did, instead relying wholly on the original text with the light sentence of 15 lashes or a fine of 40s. Furthermore, both Rhode Island and Pennsylvania did not sentence married couples for fornication before marriage, based on the evidence of their premarital pregnancy. Pennsylvania only prosecuted women of bastardy in the Bucks County records and only two women were sentenced to punishments. Those punishments were less than even the lightest suggested by the original law code.

Another point that can be made about these cases is a second gradient argument along the lines of Chapter 1's discussion about the legal codes. In both chapters, and the project in general, Massachusetts acts as a sort of control group, being the most severe in terms of punishments and expansive in terms of types of crimes for both the written laws and their application in the court systems. In the legal codes, the gradient moved from Massachusetts to Pennsylvania and then to Rhode Island as the severity and types of crimes diminished gradually. However, for the law as enforced, it seems that Rhode Island and Pennsylvania traded places,

with Rhode Island charging women with a greater variety of crimes with more specific punishments and Pennsylvania only presenting women for bastardy and rarely charging them with official punishments.

## **Conclusion**

Given this information, can it really be said that sweeping notions such as the relationship between church and state affected the daily lives of average colonial women? At least in the case of female sexual deviants, it can be proved with a fair



amount of certainty. This study began by examining the official stances of each colony on the relationship between church and state as well as the principles of gender and sexuality that were inherent to each religious tradition. It then presented examples of both the written law codes, representing official stances on sexual deviance, as well as court cases, demonstrating popular interpretation and application of those laws. By comparing those two source bases with the aforementioned principles, one can begin to discern the degree to which church intervened with state and how that was similar or different to each colony's stance on the matter.

It can quite clearly be seen, both from this research and existing historical analysis, that Massachusetts, being the only one of the three colonies to unashamedly link church and state, prosecuted by far the most cases regarding feminine sexual deviance. Massachusetts colonists and leaders tried to root out potential sexual deviance even when absolute proof of its existence could not be determined (as can be seen with the variety of cases regarding miscellaneous sexual misdeeds) or when the crime was no longer a threat to the community in terms other than the spiritual (as was the case with the vast amount of married couples charged with premarital pregnancy). Massachusetts was the only colony to charge married couples for premarital pregnancy and various degrees of suspicious sexual behavior, thus demonstrating that women were at a greater risk in the Bay Colony for being found guilty of even the suspicion of having inappropriate sexual interactions with members of the opposite sex. Puritan principles left little room for privacy or sexual interaction outside the confines of marriage, due to the heavy

suspicion and anxiety built into Puritanism. It is clear that these principles wound their way into the law codes. Thus the legal evidence confirms the colony's official position on the relationship between church and state.

Rhode Island and Pennsylvania both had significantly less severe statutes regarding sexual deviance and its accompanying punishments to start with, as well as less frequent convictions of women for these crimes. The only crimes that Rhode Island applied to women were adultery and fornication, and Pennsylvania included women only in the laws regarding adultery, fornication, bastardy, and marriage. At least to some degree, the evidence supports claims that these two colonies upheld freedom of consciousness and the separation of church and state.

However, these two colonies must be examined closely in order to determine whether any principles from the two faiths subverted official claims of the separation of church and state and affected legal proceedings anyway. In looking for such evidence, one would expect to find more prejudice in the records of Rhode Island, given that it was socially a Puritan colony and thus connected to a religious tradition that officially delegated women to a lesser role due to their spiritual weakness and susceptibility. Pennsylvanian Quakerism, on the other hand, would be expected to demonstrate a more forgiving attitude toward women, based on the ideology of gender equality so ingrained within the faith.

While Jack Marietta's statistics on Pennsylvania were helpful in presenting a comparison with Edgar McManus's research on Massachusetts, no such information exists for Rhode Island and therefore the material is not helpful for this

comparison.<sup>243</sup> However, the research in this study offers data with which to work. In Rhode Island, women were charged in 81% or twenty-one of the twenty-seven total cases dealing with sexual misconduct for the years 1647-1662. Those cases concerned fornication, adultery, bastardy, and three miscellaneous crimes. For Pennsylvania, from 1684-1700 in Bucks County, there were eight cases regarding sexual misconduct with four involving women, three of which were prosecutions of women by themselves. Therefore, women were presented in 50% of cases, but only in 38% by themselves. Furthermore, six of the eight cases regarded bastardy, demonstrating significantly less crime diversity than the cases tried in Rhode Island. Thus, for roughly the same amount of time (fifteen years for Rhode Island and sixteen years for Pennsylvania), Rhode Island prosecuted women far more often than did Pennsylvania and for a larger variety of crimes.

This comparison shows that despite the fact that Rhode Island and Pennsylvania officially separated the realms of church and state, religion still influenced legal proceedings in these colonies. The reasoning for this, again, lies in the principles inherent in the two faiths. Puritanism was an all-encompassing religion. Its practitioners integrated their faith into every aspect of life. Furthermore, the gender ideologies of the two faiths were equally as ingrained and opposing. Feminine weakness and deviance was threatening to Puritanism, a faith which was heavily reliant upon patriarchy and social control. Femininity was not threatening to the Quaker faith, however, as the sexes were equal before God. Thus,

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<sup>243</sup> Jack D. Marietta, *Troubled Experiment: Crime and Justice in Pennsylvania, 1682-1800* (Philadelphia, University of Pennsylvania Press, 2006), 39-42, 80-88; Edgar J. McManus, *Law and Liberty in Early New England: Criminal Justice and Due Process 1620-1692* (Amherst: The University of Massachusetts Press, 1993), 201.

there was a higher tendency for women to be prosecuted (singularly and as a couple) in Puritan Rhode Island than in Quaker Pennsylvania. Therefore, while it may seem that Quaker Pennsylvania was the only colony truly separating church and state, it can be argued that even the Quaker faith was present within the legal system in the colony's choices to be more tolerant in the proceedings.

This point illustrates the sheer complexity of this issue. The two sources used (the laws and the court records) highlight two different ways to judge how each colony interpreted the relationship between church and state. On the one hand, the analysis of laws in the first chapter allows one to examine the official position of each government on the nature of church and state. Thus, Massachusetts's laws clearly point to religion as the inspiration behind the law codes, especially those having to deal with sexual deviance. Similarly, the more lenient laws of both Rhode Island and Pennsylvania point to their separation of the two institutions.

However, the discussion of court records in the second chapter concerns the application and interpretation of those laws. Thus, they allow insight into more of the popular opinions of the colonies regarding the appropriate relationship between church and state. From this vantage point, one can see that the inherently Puritan mindsets of Rhode Island's colonists as well as their homogeneity resulted in a higher prosecution rate for female sexual deviants than did Pennsylvania's Quaker community which was inspired by the faith's gender equality.

This study is an examination of an ideal versus a reality. Taking from the laws the basic fact that Rhode Island and Pennsylvania were more lenient than Massachusetts does not do justice to the true complexity of this issue. Without

looking at the court cases of each colony and comparing them within the selection it is impossible to get a real sense of how these colonies interpreted the relationship between church and state. Thus, the evidence actually complicates the existing scholarship and adds another facet to this debate. It would be enlightening to use this approach with other colonies to determine if the same technique could point to contradictions within their understandings of the nature of church and state. This study is also a cautionary tale against accepting historical evidence at face value. In the true nature of social history, a bottom-up approach is the best way to confirm the accuracy of broad concepts such as the relationship between church and state. Thus, it would be interesting to see if the basic principles of this study could be applied to other sectors of colonial life to corroborate these same findings through other venues.

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